

ROUTLEDGE NEW DIPLOMACY STUDIES

Secret Diplomacy

Concepts, contexts and cases

Edited by Corneliu Bjola and
Stuart Murray



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Secret Diplomacy will enlighten and fascinate readers in academic and policymaking circles and in the broader public domain. The editors' and contributors' careful analysis of theories and practices of secret diplomacy historically and contemporarily sets an impressive standard of scholarship, research and argument.

Pauline Kerr, *Australian National University, Australia*

This book provides a much needed nuanced view about the evolution of a highly salient diplomatic practice. Exploring historical contingencies, its interplay with other modes of diplomacy, as well as discussing its legal and ethical implications, this book is full of important insights about the opportunities and perils of secret diplomacy. The case studies provide for a fascinating glimpse into the workings of secret diplomacy in 21st century world politics.

Markus Kornprobst, *Vienna School of International Studies, Austria*

Secret Diplomacy

This volume investigates secret diplomacy with the aim of understanding its role in shaping foreign policy.

Recent events, including covert intelligence gathering operations, accusations of spying, and the leaking of sensitive government documents, have demonstrated that secrecy endures as a crucial, yet overlooked, aspect of international diplomacy. The book brings together different research programmes and views on secret diplomacy and integrates them into a coherent analytical framework, thereby filling an important gap in the literature. The aim is to stimulate, generate and direct the further development of theoretical understandings of secret diplomacy by highlighting “gaps” in existing bodies of knowledge. To this end, the volume is structured around three distinct themes: concepts, contexts and cases. The first section elaborates on the different meanings and manifestations of the concept; the second part examines the basic contexts that underpin the practice of secret diplomacy; while the third section presents a series of empirical cases of particular relevance for contemporary diplomatic practice. While the fundamental conditions diplomacy seeks to overcome – alienation, estrangement and separation – are imbued with distrust and secrecy, this volume highlights that, if anything, secret diplomacy is a vital, if misunderstood and unfairly criticised, aspect of diplomacy.

This book will be of much interest to students of diplomacy, intelligence studies, foreign policy and IR in general.

Corneliu Bjola is Associate Professor in Diplomatic Studies, University of Oxford, UK, and author/editor of four previous books, including, most recently, *Digital Diplomacy* (Routledge, 2015).

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Routledge New Diplomacy Studies

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Introduction

The theory and practice of secret diplomacy

Corneliu Bjola

Like the classical Greek myth of Pandora's box, secret diplomacy inspires both reverence and fear. Its actions may look beneficial and even innocent in the short term but at the same time they may have far-reaching consequences, often negative, in the long run. If history is any guide, secret diplomacy has always been a contentious subject. In 1668, England and the Netherlands made a secret treaty to force Louis XIV of France to make peace with Spain, but Louis had already made a secret treaty with the emperor of Austria by which they were to divide the Spanish dominions on the death of the then king. In 1733, the secret family compact of the Bourbons, France and Spain was one of the causes of the French and English war in America. Later, Napoleon III secretly proposed to Bismarck that France should be given Belgium and Luxemburg as the price of his friendship to the new German Confederation (Low 1918: 211–12). Louis XV's secret diplomacy, the famous *Secret du Roi*, was intended to protect France's interests in Central Europe, but it had a profound influence on the development of revolutionary foreign policy long after the death of its initiator (Savage 1998). And the secret treaties concluded by the European great powers before the First World War were subsequently seen as a major cause of the war (Morel 1915), while those concluded during the war were deemed to have prolonged the conflict (Reinsch 1922: 116–28).

The complex relationship between secrecy and diplomacy thus figures prominently in the “dialogue between states”. Like it or loathe it, the practice of intentionally concealing information from other governments, the media and/or the public is woven into the fabric of diplomacy, both past and

present. Not surprisingly, there are many detractors of secret diplomacy. Shortly after the First World War, the call for outlawing secret diplomacy rang loud and clear. The expectation was that such a move “would not bring Utopia, but it would make diplomacy honest, straightforward, clean; it would make almost impossible the chicanery, fraud, intrigue that for centuries have deluged Europe in blood and brought misery” (Low 1918: 220). More recently, civil libertarians, old and new media organisations and individuals such as Edward Snowden and Julian Assange complain that the practice is excessive and outdated, mainly because secret diplomacy conflicts with privacy, liberty or transparency. In the post-modern digital age where openness is the order of the day, the “end of secrecy is nigh”. Hoarding, pilfering or sharing secrets with allies and enemies is downright sinister, amoral and anachronistic and only creates more not less security problems for states. Echoing Woodrow Wilson, the days where the media or the public are excluded or isolated from diplomacy and foreign policy are drawing to a close – open covenants of peace must be openly arrived at.

Traditional advocates of the age-old practice of secret diplomacy, however, strongly disagree. The impact that new information and communication technologies, or Assange and Co., have had on the voluminous industry of intelligence gathering or high-level, secret negotiations has been minimal. Moreover, secrecy continues to serve diplomatic utility, particularly when a foreign policy end cannot be achieved publicly between adversaries. President Obama’s top diplomatic achievements – the normalisation of diplomatic relations with Cuba; the nuclear agreement with Iran; and the climate-change pact with China – have all been the result of secret negotiations (Landler 2014: paragraph 2), ironically conducted by an administration that initially pledged to make transparency the keystone of its public policy (Obama 2009). The fundamental conditions diplomacy seeks to overcome – alienation, estrangement and separation – are imbued with distrust and secrecy, precluded even. If anything, secret diplomacy is a vital if misunderstood and unfairly criticised aspect of diplomacy. It has been so since time immemorial. Diplomacy, in other words, begets secrecy.

Because of its historical longevity and a widespread practical acceptance on the utility and value of private, informal and secret meetings, it could be expected there is much written on the topic. This, however, is not the case.

With a notable exception (Wanis-St John 2011), the literature on this subject remains embryonic and dominated by historically focused, case-specific work with rather limited theoretical input (Reinsch 1922; Askew 1959; Launay 1963; Gallagher 2008). By taking a close look at the motivations that drive diplomats to engage in secret diplomacy, the objectives they hope to accomplish, the strategies they prefer to use, and the extent to which their aspirations are justified by the circumstances of their actions and policies, this book is therefore unique in terms of its theoretical ambition and empirical scope. This profile is illustrated by the overarching question that the volume seeks to address, which is analytically straightforward but rich in practical nuances: *does secret diplomacy work and if yes, under what conditions?* By addressing this simple question, we aim to open an analytical window not only into the internal workings of secret diplomacy but also into the lessons that the practice of secret diplomacy may teach us about the legal, institutional and normative layers of international politics.

Writing a book on secret diplomacy comes, however, with a serious challenge. How to theorise about an essentially contested concept (Gallie 1955: 168), which, as indicated above, triggers endless disputes about its proper use and utility among its detractors and supporters, and which is difficult to examine empirically due to the confidentiality of its operations? Echoing Constantinou (1996: 25), we prefer not to take secret diplomacy as a sovereign presence, immune to conceptual interpretation and contestation, but to examine the whole process of making it present. Our approach is to bring together different research programmes and views on secret diplomacy and integrate them into a coherent analytical framework capable of providing “a map, or frame of reference, that makes the complex, puzzling world around us intelligible” (Kegley and Blanton 2013: 22). Therefore, the book is not meant to offer a terminal explanation of a set of interrelated assumptions or a series of events on secret diplomacy, but rather to stimulate, generate and direct the further development of theoretical understandings of secret diplomacy by highlighting “gaps” in existing bodies of knowledge. To this end, we structure the book around three distinct themes: concepts, contexts and cases. [Part I](#) of the book elaborates on the different meanings and manifestations of the concept, [Part II](#) examines basic contexts that underpin the practice of secret diplomacy, while [Part III](#)

presents a series of empirical cases of particular relevance for contemporary diplomatic practice.

Conceptualising secret diplomacy

To understand secret diplomacy is to first define it in a theoretical sense before examining its context of application and impact in practice. Conceptually speaking, the term covers a broad spectrum of positions, ranging from quasi-formalised backchannel diplomacy, often used by the leadership of opposing groups as an adjunct to front-channel negotiations (Pruitt 2008: 37–8), to deniable methods such as the covert diplomacy conducted by secret intelligence services (Scott 2004: 330–1). What these positions share in common is a scaled resistance to transparency, the “isolation and exclusion of the media and the public from negotiations and related policy-making” (Gilboa 1998: 213). Developing an operational definition of secret diplomacy presents, of course, the advantage of us being able to describe, classify, and analyse various forms of diplomatic engagement that take place outside the usual channels of public scrutiny. But what if, as Garfinkel reminds us (1981: 7), the object to be explained suffers from epistemic shifts and dislocations that challenge the very question that we would like to ask? In other words, instead of assuming that secret diplomacy enjoys universal conceptual validity, we should seek to understand how each term of the binomial (secrecy and diplomacy) challenge and alter the meaning of each other. This way we can get a better grasp of the fine-grained analytical distinctions and normative subtleties that underpin the concept of secret diplomacy.

In the first chapter, Stuart Murray takes up this challenge by examining the evolution of secret “versus” open diplomacy across the ages. His contribution has two broad purposes. It first charts and frames secret diplomacy in relation to states, survivability and diplomacy across history. From this survey, and second, a working definition of the term is introduced as well as key themes, trends and insights in secret diplomacy from the ancient past to the present. Using recent examples of public disclosures of diplomatic secrets, the chapter then turns to the modern secrecy versus openness debate, asking if, in an age of increasing transparency, secret diplomacy is at an end or still has a vital role to play in state-qua-state

relations? Murray argues that the secrecy versus transparency debate is typical in the theory and practice of diplomacy, a familiar *contretemps* between tradition versus innovation, the old and new; the state being challenged, derided and criticised by “outsiders”. He concludes that secret diplomacy will persist, simply because of the mutually reinforcing interplay between estranged states, diplomacy and the secrecy dilemma. So long as there are states, in other words, secrecy will endure.

In the second chapter, Paul Sharp reviews how secrecy is treated in the classic texts of some of the late modern authorities – principally Harold Nicolson and Ernest Satow – in the aftermath of the First World War. Drawing also on the work of Berridge and James (2003), Sharp proposes three broad uses of secrecy on the basis of which to conduct his examination of the late modern texts: Strategic Secrecy, which some of the alliances between the great powers in 1914 were said to exemplify (secrecy about the contents of negotiations, the contents of agreements, and the fact that agreements have been reached); Operational Secrecy, which pertains to the everyday relations of diplomats and the intentional concealing of information in the course of other sorts of diplomatic relations besides negotiations; and Official Secrecy, where something is known but not acknowledged as such. Sharp finds that the late modern authors are generally but not exclusively critical of Strategic Secrecy, full of common-sense wisdom about Operational Secrecy, and consistently quiet about Official Secrecy. He also suggests that while changes in the norms and technologies of communications may have considerable impact on the ways in which secrecy is practised in diplomacy, together with the ease or difficulty of maintaining it, the classic texts continue to provide a reliable foundation for the claim that a great deal of diplomacy will continue to be about making, sharing, keeping, and discovering secrets.

In [Chapter 3](#), Marcus Holmes utilises recent insights from psychology and neuroscience in order to derive propositions regarding when we should expect “secrecy diplomacy”, a specific form of secret diplomacy where the aim is for one leader to derive the secrets of another leader through interpersonal face-to-face interaction in order to succeed in secrecy-detection. According to Holmes, secrecy diplomacy is a unique form of secret diplomacy because it often involves not only keeping the diplomatic initiative concealed from the public and media, but often one’s own

government as well. Engaging with the rationalist literature on diplomacy, he argues that secrecy diplomacy is a costly signal, though one that is different from traditional models of audience costs. Secrecy diplomacy is costly because by engaging in interpersonal diplomacy leaders are gaining the ability to read the secrets of others, but are also giving their counterpart that same ability. Therefore, leaders who engage in it are paying a significant cost in the potential for their own secrets to be read.

In the fourth chapter, Karsten Jung discusses another manifestation of secret diplomacy, ad-hoc Concerts and contact groups, which in recent years have become common practice in international crisis management. They bring together key players in informal, “mini-lateral” forums with a view to confidentially tackling a specific, often complex and contentious diplomatic or security problem. With a focus on high-profile issues, exclusive membership, and informal modus operandi, these formats are reminiscent of the back-room diplomacy practised by the nineteenth-century Concert of Europe. Yet, from the former Yugoslavia to the Middle East, Iran to North Korea, Libya to Syria, and most recently in the Ukraine “crisis”, these formats are increasingly prevalent conduits for crisis diplomacy. The purpose of Jung’s chapter is therefore to inquire into the role and relevance of such seemingly outdated formats in a world that has invested heavily in the constitutionalisation and institutionalisation of multi-lateral international affairs since the end of the Great War in 1918. Drawing on the insights of a systemic analysis and a case study on the P5 + 1’s effort to curtail Iran’s nuclear programme, Jung argues that the recent popularity of contact groups stems from the failure of established institutions to adapt to the increasingly situational nature of the post-Cold War international system. With their issue-specific approach and selective membership, the modern-day Concerts seem much better suited to the challenges of present-day crisis management than established institutions, with an inclusive approach to membership.

Contexts of secret diplomacy

Moving beyond the conceptual analysis of secret diplomacy, [Part II](#) of the volume examines how contexts inform, enable or constrain the practice of secret diplomacy. Diplomatic interactions are notably shaped by the contexts

in which they take place. Layers of shared meaning provide clues for which kinds of diplomatic solutions to which kinds of diplomatic problems are conceivable and which are not. They also play a crucial role in processes through which actors become recognised as players on the diplomatic scene, and provide repertoires of taken-for-granted ideas for making arguments and justifications in diplomatic encounters (Bjola and Kornprobst 2013: 63). Contexts thus serve as ideational backbones for a variety of diplomatic arenas, but they are particularly important for secret diplomacy. On the one hand, confidentiality implies a reduction of the number of actors involved in decision making and by extension the curbing of the range of meaning interpretation and contestation of the particular objectives and strategies of secret diplomacy. On the other hand, secret diplomacy associates itself with high-risk situations and in so doing it summons diplomats to carefully consider the likely challenges and implications of their actions. To take account of these constraints, we invited three scholars to examine the legal, domestic and ethical contexts of secret diplomacy.

The international and national legal contexts protecting secrecy and confidentiality in diplomatic relations are reviewed by Duquet and Wouters in [Chapter 5](#). The first part of their contribution focuses on secrecy within diplomatic relations. The 1961 Vienna Convention on Diplomatic Relations and various Headquarters Agreements contain provisions protecting diplomats, the diplomatic mission and, importantly, diplomatic documents and correspondence from unwanted disclosure. Developed during the Cold War, this international legal framework remains fundamental to the way in which diplomacy is conducted. The second part of the chapter explores internal and external pressures that pose a threat to the culture of secrecy in diplomacy. Diplomats often operate outside the scrutiny of the public with little oversight by parliaments, which can on occasion cause a democratic deficit. Recent years have seen a rise in public demands for openness and transparency in diplomacy, especially when human rights are at stake. Duquet and Wouters' chapter examines court cases in national and international contexts in which the freedom of speech, the right to access to information held by diplomatic services, and the freedom of the press have been invoked. While this type of litigation has begun to cause cracks in the legal regime protecting secrecy, diplomacy as yet remains an information fortress in otherwise open and democratic societies.

In the sixth chapter, Anthony Glees broadens the state-to-state context of secret diplomacy by investigating the domestic sources of secrecy and their impact on diplomatic relations. In managing conflicts between nations or countering serious criminals and terrorists, governments need to work in secret. Glees contends that it is futile to pretend that libertarian opponents of what is often termed “the secret state” can or should be ignored, or that their cases do not merit scholarly attention. The use of secrecy in policymaking must be justified and its workings subject to analysis and scrutiny. Glees then makes the case for the use of one particular variant of secret activity – “open secrecy” – to deliver national security. In democratic states the elected representatives of the people take decisions, partly in secret, which rely on secretly obtained evidence and secret operations about which the public can know nothing whilst they are underway. Governments, Glees concludes, have no chance of returning to the levels of strict secrecy that prevailed in previous times. Moreover, there is no need to re-introduce such archaic practices. Rather, open secrecy must be better managed in the twenty-first century, and its existence better explained than has so far been the rule.

In [Chapter 7](#) Corneliu Bjola asks under what conditions is secret diplomacy normatively appropriate? For him, the ethical analysis of secret diplomacy requires an understanding of the concrete situations within which the demand for secret diplomacy arises, and of the contextual considerations informing the reasoning process and the value formation through reflection of the actors involved. Drawing on pragmatic theories of political and ethical judgement, Bjola argues that a three dimensional approach centred on actors’ reasoning processes offers an innovative and reliable analytical tool for appraising the ethical gap of secret diplomacy. More specifically, secret diplomacy is normatively justified if it is supported by morally relevant principles that have a factual bearing on the case at hand, and actors are critically reflective about the broader implications of their actions for the conduct of diplomacy. Using the case of the US extraordinary rendition programme, Bjola concludes that the US secret diplomacy pursued between 2001 and 2006 faced major ethical limitations on all three dimensions. US diplomatic strategy could have still enjoyed normative validity had it been limited only to the capture and rendition of suspected terrorists, in cooperation with local authorities, and in full compliance with the terms of the Geneva Convention against torture.

Cases of secret diplomacy

In [Part III](#) of the volume we turn attention away from theoretically oriented discussions of the concepts and contexts of diplomacy to examining a set of carefully selected case studies. As a critical tool of theory building (George 2005a; Gerring 2007), case study research can help build analytical bridges between drivers, processes and implications of secret diplomacy and in so doing can provide critical empirical insight to the concepts and contexts examined in the first two parts of the volume. We are particularly interested in understanding how well secret diplomacy fares in practice and what configuration of factors may limit or undermine its effectiveness. In addition, in an effort to extract lessons that are valuable for contemporary diplomatic practice we distance ourselves from historical cases, as their practical relevance is most likely compromised by their dated social or political context. In view of these considerations, the case studies included in this section meet three selection criteria: they cover current issues of significant relevance for diplomatic practice; they include detailed empirical analyses of diplomats conducting confidential negotiations; and they contribute to a better understanding of the concepts and contexts of secret diplomacy discussed in the previous two parts of the book.

In [Chapter 8](#), James Pamment focusses on the interplay between secret and public diplomacy in the case of the failed attempt by the Swedish manufacturer Saab to sell 22 JAS-Gripen 39 E/F fighter aircraft to Switzerland. While secret diplomacy may appear at first glance to be the antinomy of public diplomacy, it may be argued that each concept brings forth the other. Secrecy may be desired when planning a campaign to influence public opinion, and efforts to sway elite opinion may be subject to strategic leaks from those actors and their staff involved in secret negotiations. Pamment examines this puzzle through the example of what has become known as “Gripengate”, a complex, \$3.5 billion (USD) arms deal between Sweden and Switzerland, which was supposed to be concluded in 2014. Secret negotiations were essential to the stability of the deal, yet the secret space for negotiations was at constant threat of leaks and media exposés. Gripengate thus encourages theorisation as a temporary, privileged space in which the discipline of hierarchical political structures was continually tested against the agency of individual actors with their specific

interests and constituencies. This case shows that secrecy plays an essential role in securing diplomatic outcomes but it is a temporary, privileged, and potentially costly technique to be wielded deliberately and carefully. For actors who maintain strong reputations for transparency and high levels of public participation – such as Switzerland and Sweden – the collision of worlds of secret and public diplomacy can prove costly indeed.

In [Chapter 9](#), David Wong challenges a key assumption about back-channel diplomacy as a secret diplomatic process intentionally hidden from public attention. He instead asks whether or not backchannel diplomacy actually encompasses a public dimension? If foreign policy is constrained by domestic public opinion, and discursive strategies are vital for legitimising policy change, it is not far-fetched to expect this same dynamic playing out in backchannel diplomacy. In other words, actors will engage in public, but tacit, discursive strategies to “prepare the ground” during the backchannelling period for the eventual policy revelation. Wong argues that public shifts in discourse can be expected when backchannel diplomacy is practised between adversarial states attempting to mend relations, because actors privy to the negotiations are likely to seek to legitimise the agreement domestically. He tests this theory through a discourse analysis of remarks and speeches made by President Obama about Iran in the lead up to the Geneva Joint Plan of Action signed in November 2013. Wong finds strong support for his theory, as various “negative” identities about Iran are de-emphasised during the backchannelling period. These findings have substantial implications for international relations as they potentially alter the theory and practice of backchannel diplomacy and provide a potential methodology for detecting the presence of so-called secret back channels.

In [Chapter 10](#), Coward and Bjola investigate the puzzling case of diplomatic responses to opaque cyber-intelligence operations (CIO). Unlike traditional espionage situations, CIOs are difficult to attribute to the responsible party and not clearly defined in international law. Designing a targeted or effective diplomatic response to such an activity is a major challenge as diplomats are obliged to signal their displeasure with the foreign policy of a state, but without being able to publically disclose the reason for their grievance. The authors argue that diplomatic responses to CIOs combine both formal and informal signals and are informed by three pragmatic considerations: the degree of exposure of the incident in the

public sphere, the nature of the relationship between parties, and concerns regarding the constraints the response might place on future actions. This analytical framework is then validated empirically through a dual case study of the Stuxnet worm in Iran and the collection of cyber-espionage incidents attributed to China. The chapter concludes with a set of recommendations about how states can respond to CIOs in a more informed, effective and proactive manner by pursuing a mixed form of diplomatic engagement that combines features of both open and secret diplomacy.

The breadth of concepts, contexts and cases examined in this book not only illustrates the challenge in attempting to describe something that is theoretically disputed, but also alludes to the extent of secrecy in diplomacy, the possibilities for future scholarship and new ways to understand the murky, if useful, tool of secrecy. This book is a starting point. It is the first scholarly attempt to theorise and chart the practical implications of secret diplomacy. It aims to instigate discussion between scholars and practitioners on the vagaries of secret diplomacy, to encourage others in a heuristic fashion to “fill in the gaps”, so to speak, and postulate on the value, utility and pitfalls of secret diplomacy in the past, present and future.

Part I

Conceptualising secret diplomacy

1 Secret “versus” open diplomacy across the ages

Stuart Murray

Introduction

Secrecy, the practice of concealing information from certain individuals or groups, is characteristic of many institutions. Businesses keep secrets for competitive advantage, to hide new products under development or to protect cash cows. The recipe for Coca-Cola is a closely guarded secret, as is the key algorithm for Google. Secret societies, from the Freemasons to Yale’s Order of the Skull and Bones, abound and intrigue, and secrets can matter in sport, the defensive plays for a Super Bowl or the opening moves for a chess match, for example.

Governments are no different. They conceal information – weapon designs, military operations and diplomatic negotiation tactics, to name but a few – from other governments, the media and the public. Most nations have official secrets acts, secret services and complex rules about access to sensitive information that pertains to national security. In the anarchic international space, secrecy is a competitive, entrenched aspect of the dialogue between states, a murky, clandestine and contentious business often shrouded in mystery. Although accepted as a mainstay of international relations, secrecy is often decried by the media or civil libertarians as excessive, mainly because it conflicts with privacy, openness and transparency.

These issues manifest in a state’s diplomacy. Keeping secrets, illicitly gathering them and/or strategically sharing them with allies and publics, both at home and abroad, are present in all historical periods of diplomacy.

Secret diplomacy has long been an important if, at times, derided component in the relations between estranged states, nations and peoples. So much so that a recurring, moral debate crystallises: should diplomacy be secret or open?

In the postmodern information age this debate is gathering strength. Prominent organisations and individuals such as WikiLeaks and Edward Snowden, journalists and some academics claim that “the end of secrecy is nigh” (Jarvis 2013: paragraph 1). Traditional advocates of secret diplomacy, however, strongly disagree, arguing that secret diplomacy is vital to a nation’s security and survival, even more so in the postmodern, information age.

In this polemic context, this chapter has two broad purposes. First, it charts and frames secret diplomacy in relation to states, survivability and diplomacy across European history. From this survey a working definition of the term is introduced, as well as the key elements of secret diplomacy. Using recent examples of public disclosures of diplomatic secrets, the chapter then turns to the present debate: in an age of increasing transparency is secret diplomacy at an end or does it still have a vital role to play in state-qua-state relations? The analysis suggests that the current secrecy versus transparency debate is typical in the theory and practice of diplomacy, a familiar contretemps between the old and new; the reticent state being challenged, derided and criticised by outsiders. The chapter argues that secret diplomacy will endure, simply because of the mutually reinforcing interplay between estranged states, diplomacy and the secrecy dilemma. So long as there are states, in other words, secrecy will persist.

The chapter has four parameters. Considering its ambitious focus on history (from the Greeks to the postmodern information age), as well as its short length, the chapter adopts a grand or meta-theoretical approach. It seeks broad themes and trends in secret diplomacy from the past to the present. Second, the state and realism are the key referent objects for inquiry, not civil society organisations (CSOs) and liberalism. Third, this chapter concentrates on secret diplomacy from a European perspective; it does not consider Asian or Arab opinions, theories and cases, for example.¹ And, fourth, fascinating and scary as it is, the chapter does not indulge in

the domestic government business of secrecy, surveillance and intelligence gathering.

Secret versus open diplomacy across the ages

To understand secret diplomacy it is important to contextualise it in a historical, statist lens. As any international relations graduate knows, states have many ideal functions such as order, justice, welfare, freedom and so on. For realists, however, none are more important than survival and security. Without security the state cannot survive, and if it cannot survive all subsequent functions are redundant. Stalin captured this notion, arguing that “we can and must build socialism in the Soviet Union ... but in order to do so we first of all have to exist” (as cited in Mearsheimer 2001: 30). Survival therefore is the primary goal of any state. They must “never subordinate survival to any other goal, including prosperity” (Mearsheimer 2001: 371). In the competitive, anarchical realm of international relations, survival and security are considered primal and supreme. Thucydides wrote of *anake* (necessity or compulsion), Machiavelli of *necissita* and Richelieu of *raison d'état*, where *any* means conducive to survival are permissible, moral or amoral. The list of means conducive to state survival – alliances, war, economic partnerships, etc. – is exhaustive; however this chapter concentrates on diplomacy.

Similarly, there are many means to diplomacy. For example, Butterfield and Wight (1966: 17) note that diplomats

have often worked by means of promises, appeals to interest, attempts at striking a bargain, devices of cajolery. They have resorted sometimes to taunts and to bullying, sometimes to quiet blackmail or impudent bluff. Even the threat of war may be one of the counters which the diplomat uses, and this itself might be merely a piece of bluff or might call for some delicate interpretation.... Diplomacy may include anything short of actual war, therefore, and sometimes the kindest thing that one can say of it is that it is better than having the guns actually firing.

Generally, diplomacy is a *means* to foreign policy ends, state security and survival, and can easily be defined in a traditional fashion as “the application

of intelligence or tact to the conduct of relations between the governments of independent states; or more briefly still, the conduct of business between states by peaceful means” (Satow 1957: 1). Diplomacy also has several key functions – negotiation, representation, communication, for instance – however its chief purpose is the gathering and dissemination of information, without which none of the other functions would be possible. Information – getting it, sharing it and harnessing it for strategic purposes – is the base currency of diplomacy.

There are many venues and forums for diplomacy. It can occur in a bilateral, multilateral, official or unofficial setting, and can be conducted publically or, more so, privately and in secret. *Secret* diplomacy, therefore, is a means to a means to an end. At its most basic, secret diplomacy is the practice of obtaining information from certain individuals and groups, hiding it from all or some, and/or sharing it with others. Information is obtained overtly and covertly (intelligence) and, depending on the circumstance, can be manipulated, spun or propagandised to suit national interests or foreign policy goals.

To fully understand the term, however, is to delve into the long and storied history of secret diplomacy, which has always been a controversial, mysterious activity. It fluctuates between the private and the public, across all periods of history. For example, the Greek city states were so derisive of secrecy, so “suspicious of their own diplomatists”, that they insisted negotiations be conducted “orally and with full publicity, at least in theory” (Nicolson 1998 [1954]: 7). Under the Greek system, emissaries delivered speeches to foreign monarchs and conducted negotiations in public,

much as happens in the ill-ordered international conferences of today. If the negotiations resulted in a treaty, the terms of that treaty were engraved in a pure attic on a tablet for all to see. Its ratification was accomplished by the public exchange of solemn oaths. Thus it could certainly be said that the Greeks adopted the system of open covenant openly arrived ... [which] did preserve them from the curse of secret treaties.

(Nicolson 1998 [1954]: 7–22)

Public debate and open diplomacy, however, were eventually written off as ineffective. For one, diplomats appealed more to the crowd than to the issue, receiving state or interlocutor. Envoys were also issued with “extremely restrictive instructions”, meaning there was little room for negotiation, and because of the public setting diplomats rarely backed down, reneged on positions or revealed secrets (Hamilton and Langhorne 2011: 15). The practice seems more akin to bad theatre, for the “pace was extremely slow”, held up by long winded, ambiguous speeches that often lasted for hours, perhaps the reason that Greek diplomacy came to be known as the “art of talking without saying anything” (Hamilton and Langhorne 2011: 15).

Following the Greeks, Rome’s contribution to diplomacy was rather scant. Their doctrine of imperialism backed up by an effective military and a belief that it was their destiny to “impose on other nations the Pax Romana” and “obliterate all opposition and to offer succor only to those who bowed to their dominance” doesn’t suggest much of a predisposition toward diplomacy, open or closed (Nicolson 1998 [1954]: 17). However, the Romans “lack of frequent military intervention in the years after 188”, as well as a number of “unsubdued tribes and a wide varieties of client kingdoms” along the Empire’s porous borders, suggests a thriving system of diplomacy (Eckstein 2009: 187). Moreover, during the decline of Rome, bribery, intelligence and negotiation kept the empire afloat.

Moving on, Rome’s successor, Eastern Byzantium, was too weak to survive except by secret diplomacy. Threatened by invasion from virtually all quarters its only hope lay in strategically playing off its enemy nations against one another via a broad range of methods: bribery, flattery, deceit, fraud, intelligence gathering, disinformation, suspicion and elaborate ceremonial proceedings to greet, amaze and confuse foreign emissaries. They practised a diplomacy of hospitality, wonderment and duplicity, all of which created an impression of an “Empire at the center of the universe” (Hamilton and Langhorne 2011: 20). Without gathering and manipulating information on allies and enemies it is doubtful the Byzantine Empire would have endured for so long, from 330 to 1453.

After Constantinople fell and diplomacy “returned” to Europe, it thus came “neither illumed by Athenian Intelligence, nor dignified by Roman seriousness, but falsified and discredited by the practices of the Oriental Court” (Nicolson 1998 [1954]: 24). During the Renaissance, secrecy,

ceremony, suspicion and duplicity became established diplomatic techniques. It was Louis XI (1423–1483) who decided that the pursuit of *raison d'état* was above morality, and infamously instructed his ambassador to Brittany “if they lie to you, see to it that you lie much more than them” (as cited in Nicolson 1998 [1954]: 31). Quite naturally, there existed a high suspicion of foreign emissaries as spies during this time. A 1481 Venetian regulation, for example, “forbade Venetian Ambassadors to discuss politics with any unofficial foreigner” (in the following year, a sentence of banishment and fines of up to 2,000 ducats were decreed) (Nicolson 1998 [1954]: 30). And, in 1492, the year Columbus “discovered” the Americas and a Borgia became pope, the relations between the Italian states became extremely competitive, often dangerously so. In the words of Mattingly (1955: 48), diplomacy at the time was

always beset by enemies. There were implacable exiles, the leaders of the faction out of power, prowling just beyond reach. There were rival cities, eager to make a profit out of a neighbor’s difficulties. And there were usually secret enemies conspiring within the gates.

Alongside frequent war amongst the Italian city states, diplomacy was labelled as “amoral, ruthless”, and heavily imbued with intrigue and secrecy, “a characteristic symptom of the new power relations of the nascent modern world” (Mattingly 1955: 48). Little wonder then that, in 1611, Sir Henry Wotton, an English diplomat serving under King James, egregiously described his vocation as nothing more than “an honest man sent to lie abroad for his country” (as cited in Low 1918: 217). During the Renaissance, diplomacy was “vicious, immoral and dangerous”, the divine attribute of kings, emperors and popes, who “made war, contracted alliances, bartered territory, sacrificed liberty for a whim or superstitious fear ... with much mystery and always great secrecy” (Low 1918: 209). Needless to say, the general public was not privy to the private machinations of those in power. The end of Renaissance diplomacy came about during the Thirty Years War, a brutal and chaotic conflict where alliances shifted almost daily. Whether on the battlefield or in the cloistered palaces of the Habsburgs, French or Bohemians, secret diplomacy prevailed, much as it did during the

negotiations at Munster and Osnabruck in the district of Westphalia, all of which were conducted behind closed doors.

The 1648 Treaty of Westphalia institutionalised many revolutionary concepts: secularism, sovereignty, religious particularism, international law, *raison d'état*, and a system of permanent and continuous diplomacy, for example. From the outset, however, this “new” diplomacy was very much like its “old” predecessor. Driven by security, distrust, power, territory and resources, the Westphalian system became immediately strategic and chess-like, a shrewd, tactful and at times deceptive game embodied by men like Cardinal Richelieu and Louis XIV. “Richelieu was always making and breaking secret agreements” (Low 1918: 213) and believed that the interests of the state were above “sentimental, ideological or doctrinal prejudices and affections” (Nicolson 1998 [1954]). Louis XIV had the “occasional outburst of separate and secret activity” but was generally against open or conference diplomacy as it was slow, tedious, expensive, cumbersome and rarely effective (Hamilton and Langhorne 2011: 78). The Sun King preferred confidential discussions between experts, where it was “far easier to make concession in private discussion than when many observers are present around the table” (Nicolson 1998 [1954]: 61).

After Westphalia, while the theory of diplomacy became quite idealistic its practice clung to secrecy. Many seventeenth-century writers were keen to enhance the poor image of diplomacy, which remained associated with “spying and excesses of theatre and show” (Holsti 2004: 183). Keens-Soper (1973: 497) notes that between 1625 and 1700 153 titles on diplomacy were published in Europe; of these, 114 were new contributions to the canon while the remainders were translations. Most of these works proposed a number of virtues a diplomat should personify, a literary fascination with a diplomat’s “moral physiognomy” (Keens-Soper 1973: 497). This new body of literature was aspirational and introduced an image of the diplomat as reliable, trustworthy and moral, which, again, “belied the actual state of diplomatic conduct” (Holsti 2004: 183). At least on paper, duplicity, secrecy and deceit were seen to be poor partners for good diplomacy. For one, De Callières (as cited in Keens-Soper 1973: 497), claimed that

it is a fundamental error and one widely held, that a clever negotiator must be a master of deceit. Honesty is here and everywhere the best

policy; a lie always leaves behind it a drop of poison, it awakes in the defeated party a sense of irritation and a desire for vengeance.

This period of idealistic scholarship is enlightening. A pattern emerges where, for the most part, the practice of diplomacy continues to be secret, duplicitous and downright Machiavellian while outsiders, in this case theorists, ardently criticise such activities as the antithesis of sound diplomacy.

In the following centuries this pattern of reality versus idealism ensues. Practically, secret treaties, agreements and negotiation became more deeply embedded in the international relations system. The family compact between the Bourbons, France and Spain in 1733, one of the causes of the French and English war in America, was a classic example of secret diplomacy, as was, later, the Sykes–Picot agreement,² the London Pact³ and the Molotov-Ribbentrop Pact, a hush-hush, non-aggression treaty between Russia and Germany signed in 1939. Secrecy, whether in a negotiation treaty or a treaty or an international conference, was considered “not only proper, but, in many cases, absolutely essential ... so necessary that if negotiations were not kept secret few treaties could be concluded” (Low 1918: 212–14). By and large, secrecy endured as a practical necessity for statist diplomacy and confirmed that international affairs remained the preserve of the elite. The masses “knew nothing of diplomacy;” it was the “royal prerogative ... one of the divine attributes of kings ... beyond the comprehension of the common mortal” (Low 1918: 209).

In fact, it wasn't until another “Great” war that the debate between secrecy and transparency inched closer to the public conscience. Much of the blame for the outbreak of the First World War fell on state-qua-state diplomacy, especially the defence treaties between kings and emperors. The clandestine agreements between Germany in Austria in 1914, or Britain and France, or how far Germany was prepared to go in support of Austria in reducing Serbia to terms, were shrouded in mystery even for decades after. For James Connolly (1915: paragraph 10), a leading Marxist and socialist at the time, such diplomacy was “hypocrisy incarnate”, full of “false prophets” where

the diplomat holds all acts honourable which bring him success, all things are righteous which serve his ends. If cheating is necessary, he will cheat; if lying is useful, he will lie; if bribery helps, he will bribe; if murder serves, he will order murder; if burglary, seduction, arson or forgery brings success nearer, all and each of these will be done.

Similarly, the journalist Maurice A. Low (1918: 210) blamed the war on “evils of secret diplomacy, that is the power of sovereigns to enter into agreements without the knowledge or acquiescence of their subjects”, for the “wretched farce”, the “endless intrigue and cabal” that involved “millions of lives and millions of treasure”. Who was responsible? The emperors and their secret treaties, the “necromancers who practised the black art of secret diplomacy”, the “ridiculous institution” of diplomacy, the “absurdity of the frippery of modern diplomacy” (Low 1918: 210–17). Leon Trotsky also opined. In October 1917, the then people’s commissar for foreign affairs in the new workers’ government revealed to the public secret treaties and diplomatic documents that laid bare the predatory war aims of Britain, France and tsarist Russia. “Secret diplomacy”, Trotsky (1917: paragraph 1) wrote, “is a necessary tool for a propertied minority, which is compelled to deceive the majority in order to subject it to its interests”. However, it is perhaps US president Woodrow Wilson who, with echoes of the Greeks, is best remembered for disparaging secret diplomacy, calling for diplomacy to be conducted in full public view with “open covenants of peace, openly arrived at”. To his credit, Wilson did not resort to making secret promises and agreements at Versailles but soon realised the practical difficulties of conducting public negotiations with cynical, war weary European leaders.

What is notable in this debate between secrecy versus transparency, however, is that the calls for openness grow louder. Prominent individuals, Marxists, a couple of poets (Wilfred Owen and Siegfried Sassoon), and an “insider” president of an emerging power began to question the rationality of the elites when it came to foreign relations, particularly because it was the public that often bore the massive cost of their leader’s secret decisions. That these calls fell on deaf ears is also significant. Despite the clamour for more transparency, secret diplomacy endures in the following decades. It reacts particularly to evolutions in information and communications

technology (ICT) and takes on new scope and function. If anything, the practice of secrecy became more specialised.

After the Second World War advances in rocketry, radar, electronic computers and satellites fundamentally altered the conduct of both warfare and diplomacy. Such technologies generated a demand for specialised military, technical and operational intelligence, the “collection by special means of covert or secret intelligence – from spies, satellite, radio or signals interception, code-breaking, covert photography or other various espionage activities” (Herman 2007: 7). To fight these intelligence wars, a number of esoteric intelligence institutions such as the British Secret Service Bureau (1909) and Government Code and Cypher School (1919)⁴ began to emerge. While at home, intelligence officers were often housed in grand, imposing and Orwellian buildings; while abroad, they were embedded in diplomatic institutions. Embassies in foreign countries became nodal points in diplomatic, surveillance and intelligence networks, and it is fair to argue that, even today, “diplomats are the ‘front door’ people in the international system” while “intelligence offices of all kinds go figuratively (and sometimes actually) up the backstairs” (Herman 2007: 7).

In history, the relationship between diplomacy, secrecy and intelligence gathering, in the pursuit of state survival – what diplomacy is – often conflicts with public or media opinion of the relations between states – what diplomacy ought to be. Little has changed over the centuries, so much so that certain key characteristics of secret diplomacy can be theoretically distilled from history. As Hoy (1996: 2) notes, theories are particularly helpful when approaching a relatively underexplored term such as secret diplomacy; they describe a “set of interrelated concepts, assumptions, and generalizations that systematically describes and explains regularities in behaviour [of organisations] ... moreover, hypotheses may be derived from the theory to predict additional relationships amongst the concepts”. Postulating on such theory is the purpose of the following section.

The key elements of secret diplomacy

From the above historical survey, a somewhat long-winded definition can be introduced, where secret diplomacy can be seen as an age-old practice

carried out by governments without the knowledge or consent of their people. It is conducted out of the view of the media and behind closed doors and goes by several names – quiet, backchannel or back-door diplomacy. Secret diplomacy is also a versatile, strategic and tactical state device, particularly in high-profile, media-heavy, intractable conflicts, where neither party may wish to concede anything publically, for fear of appearing weak or “losing face”. And, finally, secret diplomacy can be overt or covert, blurring the boundaries between other state practices such as intelligence or surveillance. Its clandestine nature is perhaps the reason why secret diplomacy is derided as sinister, murky and amoral by outsiders, especially hacktivists, civil libertarians and/or old and new media organisations arguing for greater transparency in international affairs.

The historical survey carried out in the previous section is also useful in that key themes and trends emerge, which inform the present and future of secret diplomacy. In total, five are presented forthwith. First, secret diplomacy has always been part of the relations between political entities. Secrecy can be evidenced from ancient to modern times. Each epoch therefore informs a subsequent era of diplomacy, hence Nicolson’s (1998 [1954]: 25) belief that it was “the Byzantines who taught diplomacy to Venice it was the venetians who set the pattern for the Italian cities, for France and Spain, and eventually, for all Europe”. From there, the Westphalian state system spread with colonialism, so much so that the current diplomatic system – although certainly more global than Eurocentric – is deeply informed by the past. The reason secret diplomacy persists across the ages is pragmatic. Used tactically, strategically and diplomatically, secrecy is a diplomatic means to state’s foreign policy ends.

A second historical characteristic is that secrecy, because of its very nature, always contrasts with transparency. The former is often argued to be amoral while the latter is, arguably, more just, virtuous and honourable. For states, this dichotomy is unavoidable but necessary. Survival, by any means possible, is their prime function, of which all others derive from. For states, secret diplomacy may, at times, be a sinister, shady and repugnant element of statecraft; however the ends justify the means, so we, the public, are often told. If these means include spying, lying, deceiving the public, the media and/or one’s diplomatic rivals, then so be it.

Moreover, and third, all states practise secret diplomacy, which suggests a rather simple, irreducible conclusion: well, if they're doing it, so will we! The widespread practice thus creates a *secrecy dilemma*, to borrow from, adapt and paraphrase John Herz (1950); a cyclical, structural notion where one state's secrecy industry, regardless of its intent, leads to rising insecurity for other states. A central principle of the international relations system is that secrecy, in other words, begets secrecy.

A fourth key characteristic relates to the role of tradition in diplomacy. As an institution, diplomacy is notorious for being change-resistant. It therefore, "clings to secrecy. Even in an age of progress diplomacy remains faithful to tradition. It resists innovation and it stands triumphant as the one perfect institution devised by the perverted ingenuity of man" (Low 1918: 241). Perverted or not, the past very much informs the current theory and practice of traditional diplomacy. This reliance on the past as a guide to the present makes it unlikely that one of diplomacy's key historical functions – the covert and overt gathering and dissemination of information – will disappear any time soon. This "propensity to treat the future as an extension of the past" is a central characteristic of diplomacy, one that is perhaps "psychologically more comforting than living with an uncertain future" (Reychler 1996: 12).

The fifth and final characteristic of secret diplomacy is that it always attracts vigorous discussion. Depending on the epoch or civilisation, a debate between private and public diplomacy, whether over its morality or utility, is evident across all periods of history. The twenty-first century is no different. Defenders of secret diplomacy argue that the practice is vital to a nation's security and survival, particularly in a complex, rapidly evolving modern security environment. Governments keep secrets that keep the people safe, so the logic goes. Conversely, transparency advocates find the practice deplorable, pejorative, immoral and counter-productive. Secret diplomacy is "evil", a "vice", that does not protect a nation but endangers it, provoking others into dangerous, reciprocal actions and ultimately bogging international relations in the dark ages (Low 1918: 211). Until recently, transparency advocates have most certainly been in the minority. However, the new tools and technologies of the digital era have greatly amplified their voice, as well as their access to volumes of closely guarded, so-called state secrets. Of all the periods across history, the postmodern information age

provides a compelling environment in which to analyse and understand the practice of secret diplomacy. Depending on who you read, this current historical epoch could lead to the “end of secrecy” in diplomacy and international relations (Jarvis 2013: paragraph 1).

The postmodern diplomatic environment, the “end of secrecy” and WikiLeaks versus the US government

Until the end of the Cold War the debate between secretive government activities and transparency occasionally made headline news, but did not threaten to fundamentally alter the fabric of international relations. Since the mid-1990s, however, as civilisation moves from the modern, industrial age to the postmodern, information age, tectonic shifts in security, survival and diplomacy are occurring. Due to rapid technological changes, many scholars, journalists, and the odd practitioner, believe the “end of secrecy” is nigh. Using Cablegate – the release by WikiLeaks in 2010 of 251,287 classified cables sent by the US State Department – as a brief case study, the chapter now turns its focus to the recent past. It revolves around one simple question: in the digital age, is secret diplomacy at an “end” or does it still have a vital role to play in state-qua-state relations? This is an important question. For the first time in history, networks – not individuals – of transparency advocates are colluding with a view to reveal all in the public interest. These networks of whistle-blowers have access, obtained covertly (a great irony in itself), to massive amounts of evidence that unequivocally confirms governments practice shady activities, both at home and abroad. The data, they claim, will fundamentally alter the practice of secret diplomacy, particularly the core functions of overt and covert information gathering and dissemination.

The “end of secrecy” is thus a viable proposition because of a number of recent dramatic shifts in the conduct of modern diplomacy. For one, states no longer monopolise foreign affairs. Instead they co-exist in a plural system with “new” diplomatic actors: CSOs such as Transparency International, multinational corporations (MNCs), ICT behemoths such as Google, Siemens and Microsoft, inter-governmental organisations (IGOs) and influential activists and “celebrity diplomats” like Bono, Bob Geldof and Julian Assange

(Cooper 2007). These actors constitute a vast “polylateral” network, made up of vertical or horizontal channels and coalitions of non-state actors (Wiseman 1999: 3). Globalisation – the widening, deepening and speeding up of the international space – is fostering more transparency, particularly in the economic sphere. Given the choice, “investors put their money where transparency allows some predictability about the likelihood of returns”, which creates powerful incentives for “ever higher degrees of self-disclosure” (Florini 1998: 56). And, nowadays, the public matter to diplomacy and foreign policy more than ever, “protecting them, understanding their history, their culture, their structure and their policies; what worries them, what inspires them, what they want and what they need; what they think, and what they do” (Crowley 2012: 245). But the biggest change to affect international diplomacy has to be the impact of the ICT revolution.

The data relating to the ICT revolution is staggering. Since the mid-1990s the speed and volume of information has increased exponentially. In an oft cited quote, Nye claims that,

by one estimate, 161 billion gigabytes of digital information were created and captured in the year 2006 alone (that is about 3 million times the information in all the books ever written). In 2010, the annual growth in digital information is expected to increase more than six-fold to 988 billion gigabytes. This dramatic change in the linked technologies of computing and communications is changing the nature of government and accelerating a diffusion of power.

(As cited in Hanson 2012: 21)

If anything, Nye underestimated the volume of data: as of 2012, 2.5 exabytes of data were created, each day. In the same year, the number of people “using the Internet reached the milestone of 2.7 billion people”, a remarkable figure but still much fewer than mobile cellular users, which reached “an estimated 6.84 billion by [sic] end of 2013” (International Telecommunications Union 2013: 2–3). Speaking of individuals, Edward Snowden and Co. have demonstrated that ordinary people can have an impact in international relations. Never before has so much information been in the hands of so many people with the ability to virtually organise, mobilise and communicate, all at the touch of the proverbial button. Such

dramatic changes have had a significant impact on traditional aspects of diplomacy, none more so than the practice of secrecy.

One well-known case encapsulates the above points. In 2010, the whistleblowing website WikiLeaks publically released the entire contents of a State Department archive known as the Net Centric Database, that is, 251,287 classified or highly sensitive documents “involving two active military campaigns and just about every bilateral relationship the United States has around the world” (Crowley 2012: 246). Cablegate (to use Julian Assange’s term), is a strong example of non-state, networked diplomacy aimed at complete transparency: an individual (Bradley/Chelsea Manning, a US military analyst) obtained a huge amount of classified data, which, after a series of online meetings, was passed to a “new” diplomatic actor in WikiLeaks who, in turn, partnered with the *New York Times*, the *Guardian* and *Der Spiegel* to (further) publicise evidence of secret diplomacy on a global scale.

This network sought to reveal the hypocrisy inherent to US diplomacy, especially the time-honoured practice of saying one thing publically and doing another in practice, as well as lying to publics at home and abroad in the name of national security. While Barack Obama (2009), the world’s first digital president, was waxing lyrical about transparency,⁵ US Apache pilots were gunning down Iraqi journalists and civilians in a video that WikiLeaks entitled *Collateral Murder*. While some US diplomats were wooing corrupt Yemeni dictator Ali Abdullah Saleh to take responsibility for US air War on Terror air strikes (including one that left 55 people dead, at least 41 of them women and children), others were instructed to covertly gather personal information from counterparts at the UN (ranging from credit card information to Internet passwords, and even DNA samples). The list goes on, and on, and on. None of these violations were known to the public until 2010, when WikiLeaks released the *Collateral Murder* video, alongside 251,287 diplomatic cables.

The US response to WikiLeaks ranged from the extreme to the moderate to the routine. Peter King (as cited in Leonard 2010: paragraph 6), then chairman of the Homeland Security Committee of the United States House of Representatives, said of the leaks “this is worse even than a physical attack on Americans, it’s worse than a military attack”, and called for WikiLeaks to

be listed as a “foreign terrorist organization”. A stoic Hillary Clinton (2010: paragraph 2), then Secretary of State, strongly condemned the “illegal disclosure of classified information”, arguing that, “it puts people’s lives in danger, threatens our national security, and undermines our efforts to work with other countries to solve shared problems”. Robert Gates (2010: paragraph 3), secretary of defense at the time, simply shrugged his shoulders. Cablegate was no “melt-down” or “game-changer”; “is this embarrassing?” he asked, “yes. Is it awkward? Yes. Consequences for US foreign policy? I think fairly modest”.

Where WikiLeaks has led others have followed. Since Cablegate dozens of similar hacktivist organisations have appeared. They all share the same goal: to act as nodal points in a network of media organisations, CSOs, individuals and others determined to expose and end government secrecy. Of those individuals, Ed Snowden, is perhaps best known. Snowden, a former contractor at the National Security Agency (NSA) who leaked millions of classified government files, noted that his “sole motive” was “to inform the public as to that which is done in their name and that which is done against them” (as cited in Greenwald 2013a: paragraph 7). In the information age, such leaks are likely to continue. All it takes, according to Jeff Jarvis (2013: paragraph 16) of the *Guardian* newspaper, is “one technologist, one reporter and one news organisation to defeat secrecy”.

Governments remain unimpressed. What Manning, WikiLeaks and Co. did was not whistle-blowing – exposing the wrongdoings or misdeeds of official conduct in the public interest – but a case of theft bordering on treason. For Hillary Clinton (2010: paragraph 7), these actions undermined the entire process of diplomacy, the “trust and confidence” that forms the bedrock of political relationships with other countries, as well as hundreds of “human rights workers, journalists, religious leaders and other activists”. They detrimentally affected national security, and hampered international efforts at “fixing the global economy, thwarting international terrorism, stopping the spread of catastrophic weapons, advancing human rights and universal values” (Clinton 2010: paragraph 2). To those who “mistakenly applaud” hacktivists like Assange, the message is clear: “there is nothing laudable about endangering innocent people”, the then Secretary of State (Clinton 2010: paragraph 9) noted, “and there is nothing brave about

sabotaging the peaceful relations between nations on which our common security depends”.

In the WikiLeaks case both sides claimed victory. During the trial of Bradley/Chelsea Manning, the US government urged the court to “send a message to any soldier contemplating stealing classified information. He [Manning] betrayed the United States and for that betrayal he deserves to spend the majority of his remaining life in confinement” (as cited in Gosztola 2013: paragraph 10). Two days later, Manning was dishonourably discharged and sentenced on 21 August 2013, to 35 years in prison on multiple counts, “including violations of the Espionage Act, for copying and disseminating classified military field reports, State Department cables, and assessments of detainees held at Guantanamo Bay, Cuba” (as cited in Tate 2013: paragraph 3). For Julian Assange (2010: paragraph 8), international relations would never be the same. “Geopolitics”, he noted, “will be separated into pre and post-Cable gate phases”. Institutions such as the State Department “are abusive and need to be in the public eye”, he continues; they “can either be open and honest, or they can be closed, conspiratorial and cease to be efficient”. As for Chelsea Manning (2011: paragraph 2), she said “God knows what happens now. Hopefully worldwide discussion, debates, and reforms ... I want people to see the truth ... because without information, you cannot make informed decisions as a public”.

The WikiLeaks case and “who won” from it remains a mystery – historical nation-states addicted to secret diplomacy as a means to survival, or an “anonymous” and apparently multiplying army of ICT empowered, Assange-inspired pro-transparency hacktivists? Therefore, in the digital age, is secret diplomacy at an “end” or does it still have a vital role to play in state-qua-state relations?

Secret “versus” open diplomacy in the digital age

The WikiLeaks case and other public disclosures of once confidential data generate significant insight into the present and future of secret diplomacy. For one, the sheer volume of secret documents is set to become a by-product of the age of Big Data (a term used for the massive data sets the Internet age generates). Edward Snowden copied an estimated 1.7 million files, of which only a part have been leaked. In addition to volume, the speed at which

today's leaks unfold is also characteristic of the digital age. Manning downloaded the Iraq and Afghanistan War Logs in January 2010, they were published by WikiLeaks on 5 April, while the sensitive US Embassy cables were released on 28 November in the same year. If the first decades of the ICT revolution have taught states anything it is that telescoping, the compression of time, information and/or events is only set to increase. The WikiLeaks case also illustrates that governments and diplomats must now contend with "new" security threats from within, ad-hoc networks of hacktivists and a virulent form of anti-secrecy advocacy.

That we live in a time when it will soon be "difficult to imagine secret diplomacy" is a more difficult proposition to accept (Kurbaliga 2011: paragraph 25). First, public disclosures of secret diplomatic cables, state surveillance plans or failing war strategies only confirm what most informed people already know. Consider Ehud Barak's "sensational" statement released by WikiLeaks. In June 2009, the Israeli defence minister estimated that there was a window of "between six and eighteen months in which stopping Iran from acquiring nuclear weapons might still be viable", after which, "any military solution would result in unacceptable collateral damage" (as cited in Black 2011: paragraph 4). This news was not sensational in the slightest. The Israelis have been rattling their sabres over Iran for years, including the 2012 appearance of Prime Minister Netanyahu at the UN general assembly with an illustration of a cartoon bomb and red line. WikiLeaks and Co. confirmed the six o'clock news, that's all. They revealed that states keep secrets from one another. These, by their very nature, could be a little embarrassing and slightly controversial but they were mostly benign. Leaked cables, Hillary Clinton (2010: paragraph 10) remarked at the time, merely documented "the fact that American diplomats are doing the work we expect them to ... and it should make every one of us proud".

Second, in the anarchic twenty-first century international relations system no institution other than the state is as capable of providing survival and security. Transparency does have a role to play in this system – it has been pivotal in the compliance of many multilateral arms control arrangements, for example – but there are "significant reasons to move cautiously toward greater reliance on openness"; in certain circumstances "some secrets are legitimately worth protecting, information can easily be misused or misinterpreted and, even if all the conditions are right, transparency does

not always work” (Florini 1998: 60–1). Of Israel’s policy of ambiguous nuclear deterrence Florini (1998: 60) correctly notes that “transparency will aggravate conflict”, removing the “ambiguity that can otherwise conceal conflict; what someone is doing is less important than why they are doing it”.

Third, secret diplomacy continues to demonstrate its value, particularly in intractable conflicts that can never be resolved by open, transparent diplomacy. Secret diplomacy played an integral role in backchannel negotiations between the IRA and the British government, between Kissinger and Lê Đức Thọ in the Paris Peace Accords, George H. Bush and Ariel Sharron, Israel and the Palestine National Authority, and the United States and the Taliban, to name but a few examples. In intractable conflicts each side has so much to give and lose they rarely publically admit or concede anything. Whereas, if total secrecy can be guaranteed, trust can be established and the impossible happen. Indeed, the Iranian nuclear crisis would have endured had US deputy secretary of state William Burns not instigated backchannel negotiations with a series of secret meetings before the June 2014 election of Iranian president Hassan Rouhani. Clearly secret diplomacy continues to play a vital role in international relations and diplomacy.

Fourth, a mentality of crusading against a morally corrupt, sneaky and evil diplomatic system seems to prevail among the hacktivists, not to mention a shade of narcissism. As noted, Assange himself, immodestly claimed that the world would never be the same because of his organisation’s actions. Or, consider the opinion of Jarvis (2013: paragraph 4) of the *Guardian* newspaper, one of WikiLeaks collaborators, who writes in an article entitled “Welcome to the end of Secrecy” that:

Openness is the more powerful weapon. Openness is the principle that guides, for example, Guardian journalism. Openness is all that can restore trust in government and technology companies. And openness – in standards, governance and ethics – must be the basis of technologist’s efforts to take back the net. Individuals must make a moral choice, whether they will side with secrecy or openness.

The choice, as this chapter has illustrated, is not so simple. History confirms that polities have engaged in secret diplomacy since time immemorial. Perhaps they “ought” to do otherwise but they are hardly likely to renege on a core, embedded dictum any time soon: survival by *any* means possible. So long as the state system endures and the secrecy dilemma persists the practice of secret diplomacy will continue, simply because it continues to serve strategic and tactical value. Furthermore, some secrets *must* be protected: military operations, weapon capabilities, intelligence operations, diplomatic communications and critical infrastructure.

Finally, when it comes to any discussion on secret and open diplomacy it is impossible to ignore the sense of *déjà vu* that infuses any discussion on diplomacy. A sense of hysteria usually accompanies any threat to diplomacy’s environment, particularly in respect to ICT. “My God”, cried Palmerston, the British prime minister, on receiving the first telegraph message in the 1860s, “this is the end of diplomacy” (as cited in Kerr and Wiseman 2011: 141). Diplomacy has seen many revolutions come and go, and *raison d’état*, survival and secrecy endure. Nothing has ended; nothing is “dead” (Ramsay 2006: 273). To argue, therefore, that revolutions in ICT have fundamentally changed the game of diplomacy is problematic. A revolution can be defined as an overthrow and replacement of an established system by the people governed, a radical change in society. As far as the various leaks of diplomatic secrets are concerned the masses have yet to rise up. No government or regime has been overthrown, and the Westphalian system of states has yet to be repudiated. If anything this is a time of duality for diplomacy, where the new co-exists with the old, the open with the secret.

Notes

- 1 This is not to claim such perspectives are unimportant. Sun Tzu, for example, devoted a chapter entitled “Employment of Secret Agents” to his *Art of War*. Rather, this chapter contends that the current global diplomatic system has its origins in Europe. A European perspective is thus instructive.
- 2 A secret 1916 agreement between the governments of the United Kingdom and France, with the assent of Russia, defining their proposed spheres of influence and control in the Middle East should the Triple Entente succeed in defeating the Ottoman Empire during the First World War.
- 3 Also known as The Treaty of London, the pact was a secret agreement signed in London on 26 April 1915 by the United Kingdom, France, Russia, and the Kingdom of Italy. It aimed to persuade

Italy to turn on its former allies, including Germany, leave the Triple Alliance and join the Triple Entente.

4 Renamed Government Communications Headquarters (GCHQ) in 1946.

5 President Obama (2009) said:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

2 Making sense of secret diplomacy from the late moderns to the present

Paul Sharp

Introduction

Secret diplomacy poses interesting puzzles for the student of diplomacy. Secrecy is, in the words of the editors of this volume, “woven into the fabric of diplomacy”. Berridge notes that from the late seventeenth to early eighteenth centuries the need for secrecy in diplomacy was regarded as “self-evident” (Berridge 2004: 3). Most authoritative sources accepted this. Insofar as they were interested in it, their focus was almost entirely on how to keep secrets, not why they needed to be kept. Even a critic like Marx was more interested in the things about which diplomats kept secrets than the issue of secrecy itself. Russian diplomatists, he maintained, engaged in secrecy “to conceal intrigues against foreign nations”, while their British colleagues used it “freely to express their devotion to a foreign court” (Marx 1989). It was not until “secret diplomacy” (not quite the same thing as secrecy in diplomacy) became an issue after the outbreak of the First World War that the “why?” questions began to receive attention. Even then, this was hesitant and intermittent to begin with. Satow, for example, completing his famous *Guide to Diplomatic Practice* in 1917, mentions secret diplomacy only twice. The first time he uses the term to refer to Louis XV and Napoleon III’s habit “of carrying on secret diplomacy behind the back of the responsible minister” (Satow 2011b [1917]: 141), a practice more often referred to as “double diplomacy”. The second time he uses it is in the epilogue to the guide, rather than the body of the text. There, he dismisses those who attribute “the present sanguinary struggle to a supposed failure of diplomacy” and who

attempt “to discredit what is described as ‘secret diplomacy’ ” (Satow 2011b [1917]: 360). Yet secrecy in diplomacy has remained an issue since the First World War. It has so almost certainly because the keeping of secrets conflicts with norms of openness, transparency and accountability for which declaratory support, at least, has continued to strengthen throughout the last hundred years. More recently, and less certainly, it has been suggested that developments in the technologies of information exchange, storage and retrieval make secrecy in diplomacy, if not impossible, then far more difficult to achieve than it was in the past. Today, therefore, secret diplomacy presents as practice that is taken for granted, assumed to be essential and unavoidable, accused of being at odds with prevailing values, and predicted to be under existential threat, all at the same time.

As the tendency to take it for granted suggests, secret diplomacy has also been undertheorised. In this chapter, therefore, I examine how secrecy is presented in some of the classic texts on diplomacy, focusing, in particular, on the defence of secrecy mounted in the works of some of the late modern authorities – principally Harold Nicolson and Ernest Satow – in the aftermath of the First World War.¹ On the basis of this examination, I make the following claims. First, secret diplomacy, as it is presented in their works, is a concept replete with nuances, subtleties and, above all, ambiguities. Second, these three properties of secret diplomacy have long been intuitively known and instinctively enacted by the best practitioners. And third, insights from what is variously known as critical, postpositivist, and reflexive theory are useful in making these properties of secret diplomacy visible, explicit and understandable.

Secret diplomacy is difficult to define. Secrets may be thought of as packages of knowledge shared between some people and intentionally concealed from others. Diplomatic secrets may be thought of as packages of knowledge shared between some diplomatic actors and intentionally concealed from others. In both cases, these packages of knowledge are assumed to contain information usually, but not necessarily, concerning those who share the secret. Secrets are created and shared primarily to accomplish objectives in regard to those who are not party to them. These objectives may be malign in the sense of putting those who are not party to them at a disadvantage, for example, by leaving them with incomplete and

inaccurate information. They may be benign in the sense of putting those who are not party to them at an advantage, for example by sparing them from information that might harm them. Secrets are also created and shared as way of creating a relationship between the sharers. Secret making and sharing seem to be universal practices, but they are practices that depart from general principles about openness and honesty in human relations, and are thus buttressed by norms that specify the exceptional circumstances in which their performance is justified.

Secret diplomacy may be viewed as a sub-practice of diplomacy, itself a practice specifying how, by whom and to what ends the relations of separate groups of human beings – often, but not necessarily, sovereign states – should be conducted. The making and sharing of secrets in diplomatic relations attracts the same sorts of controversies as it does in other relations. In addition, however, these controversies are conducted against a backdrop provided by arguments over whether sovereign states, operating in a universe of thin moral constraints and obligations, do so according to their own moral code, one shaped by the primacy of their own interests. Those who argue that this is so maintain that, in the service of these interests, almost anything – including making and sharing secrets – goes. Diplomacy, they claim, itself constitutes an exceptional circumstance justifying departures from the general principles of honesty and openness. Those who reject the claim that the relations of sovereigns are different from relations between people tend to reject the case for secrecy. Indeed, they may argue that creating secrets and sharing them on the part of sovereign collectives is even less justified than on the part of individuals since the former are, or ought to be, public actors engaging in the public interest on matters of public concern.

Secret diplomacy is difficult to define. The value of trying hard to do so is called into question by the fact that people use the term to describe different things. Berridge and James, for example, identify the following: the content of negotiations; the fact that negotiations are being undertaken; the content of agreements reached; and the fact that agreements have been reached (Berridge and James 2003: 239). Building on their approach, therefore, I offer three broad uses of secrecy that can be identified in the texts focused upon in this chapter.

- Strategic Secrecy of the sort that some of the alliances between the great powers in 1914 were said to exemplify. This corresponds to Berridge and James' secrecy about the contents of negotiations, the contents of agreements, and the fact that agreements have been reached.
- Operational Secrecy of the sort pertaining to the everyday relations of diplomats and, indeed, human beings in general. This corresponds to Berridge and James' secrecy about the fact that negotiations are being undertaken, but adds the intentional concealment of information in the course of other sorts of diplomatic relations besides negotiations.
- Official Secrecy of the sort where something is known but not acknowledged as such. Berridge and James' scheme does not address this dimension of secrecy, but reflexive theorists and some literary figures do.

I conclude that the texts examined here are generally, but not exclusively, critical of Strategic Secrecy, full of common-sense wisdom about Operational Secrecy, and consistently quiet about Official Secrecy. I also suggest that while changes in the norms and technologies of communications may have considerable impact on the ways in which secrecy is practised in diplomacy, together with the ease or difficulty of maintaining it, the classics continue to provide a reliable foundation for the claim that a great deal of diplomacy will continue to be about making, sharing, keeping and discovering secrets.

Strategic Secrecy

Strategic Secrecy refers to agreements between sovereign states, all or parts of which are concealed from other states and general publics, including those of states party to the agreements. The secret alliances into which the European great powers entered both before and during the First World War are examples of Strategic Secrecy and were the principal target of the critics of secret diplomacy. Those critics argued that governments, which were often unaccountable to their people, had made commitments to one another of which their people were ignorant, for example, the details of Britain's guarantee to Belgium and those of the Franco-Russian alliance (Nicolson 1969: 44). Though unaware of these commitments, the critics pointed out, the people in whose names they had been made were to be profoundly and

tragically affected by them. In addition, a specifically diplomatic line of criticism emphasised the dangers of making commitments about which other states were unaware, for example, the precise details of Italy's part in the Triple Alliance with Germany and Austria Hungary, and the secret undertakings that it made to France only days after renewing that alliance (Taylor 1954: 406). No one, including most Italians, knew whether Italy would enter the war, or on whose side if it did. In the case of the pre-war treaties it was largely secret clauses rather than treaties as a whole that were said to be the problem. Treaties made during the war, in contrast, specifically those promising territorial gains to Italy and Romania if they entered the war, and to Russia if it stayed in the war, did enjoy secret status as a whole, and caused a great shock, at least among general publics, when they were revealed by the Bolsheviks after the October revolution in 1917 (Nicolson 1965: 177).

Secret diplomacy became an issue after the First World War. However, secrecy in diplomacy may be regarded as having become a diplomatic "norm" (Bátora and Hynek 2014: 73) or "obsession" (Sofer 2013: 11) in fifteenth-century Europe, although the presence of secret societies undertaking diplomatic tasks in other places at earlier times has also been identified (Numelin 1950: 234). The emergence of diplomatic secrecy in Europe is linked to the appearance of resident embassies and the fears of espionage resulting from the ongoing presence of foreigners at court that these engendered. In the classic commentaries on these developments, the distinction drawn above between Strategic Secrecy and Operational Secrecy does not emerge, at least to begin with. Diplomacy was very much an affair of individual personalities – sovereigns and their representatives – and the relations between them. The French ambassador at the Spanish court, for example, was held to be France and France, in its turn, to be embodied in its sovereign ruler. Strategic Secrecy is implied, however, by several sources claiming that the principal task of an ambassador was to "discover the secrets of the court where he resides" (Callières 1983 [1715]: 80). It was this function that allowed Callières, and Wicquefort before him, to refer to ambassadors as "honorable spies" (Callières 1983 [1715]: 36). A principal duty, according to Pecquet, involved keeping the policies and commitments of their own sovereigns secret to avoid their sabotage by third parties (Berridge 2004: 3). Indeed, Callières speaks of each ambassador being "master

of his own secret” in the singular, and says that “no man shall penetrate his secret before the proper time”. To this end, ambassadors should avoid emotions such as getting angry. Anger and fear “may make him discover [reveal] his secret” (Callières 1983 [1715]: 78–80). Thus, ambassadors are presented by Callières as each having a secret as part of their core that they seek to protect while manoeuvring in a world of others with secret cores that they seek to discover.

Secret treaties are rarely considered in the classics in terms of the issues raised by secret diplomacy. They are simply presented as a facet of diplomatic life. Thus, Callières merely notes, without comment, that “There are treaties which are called secret treaties, because the execution and publication of them remains for some time suspended. There are likewise public treaties, to which are added some secret articles” (Callières 1983 [1715]: 155). However, in his discussion of forming alliances against third parties, Machiavelli signals an issue that is intimately bound up with secrecy, the question of timing in regard to when an alliance is revealed (Berridge 2004: 42). Machiavelli and others are well aware of the military advantages of what would now be called strategic surprise. The possession of secrets and their timely revelation also conferred other advantages. De Vera, for example, claimed that secrecy was “the foundation of the edifice, the helm of the ship, the bridle of the horse, and the cause of success is that at which one is aiming”. In part it was so because secrecy “in great affairs gives a great reputation to the person who negotiates them” (Berridge 2004: 91). Echoing this theme, Numelin notes how the “mystic glamour” of secret societies of young men awakened “sentiments of curiosity, fear and awe” (Numelin 1950: 234). Richelieu observes that secrecy makes possible the execution of *faits accomplis*. In addition to the advantages of strategic surprise noted above, however, he adds, that their successful execution adds to a reputation for decisiveness that can itself nullify opposition (Berridge 2004: 78). It may be seen, therefore, that Strategic Secrecy is largely present in the commentaries of the early classics by implication. It is an embedded or taken-for-granted diplomatic norm that is important but so obvious that it barely needs to be discussed. As noted above, Satow mentions secret diplomacy, understood in this sense, only once and to maintain that the current “strictures [against it] we hold to be without foundation” (Satow 2011b [1917]: 360). The strictures to which he refers, however, not only

provide an indicator of how attitudes had changed to this taken-for-granted norm at the time Satow was writing. They also provide the opportunity and the need for a more explicit analysis and defence of secret diplomacy by those sympathetic to the old or modern diplomacy and suspicious of the changes that were supposedly heralded by the use of the term “new diplomacy” after the First World War.²

At the forefront of these defenders was Harold Nicolson, and his comments have provided the foundation for the position taken by most commentators sympathetic to the classical tradition of commentary on old or modern diplomacy (Magalhães 1988; Sofer 2013; Watson 1983). Nicolson presents himself as a devotee of new diplomacy disillusioned by the realities that he had witnessed as a member of the British delegation negotiating the Versailles settlement (Nicolson 1965). Like Satow, he presents the diplomacy of his time as being undertaken in a world of rising moral standards. For Satow, progress “to ever higher moral levels” is indicated by the shift from “dynastic ends” to “national purposes” (Satow 2011b [1917]: 360). For Nicolson, in contrast, it is the rise of democratic values and expectations that marks this progress. He is clear that he prefers democratic diplomacy even in a transitional phase in which it had yet to “find its own formula”, to what has gone before (Nicolson 1969: 53). No doubt this democratic progress has been purchased at a price for diplomacy. Uninformed public opinion, he maintains, risks introducing unwanted passions into the conduct of foreign relations. Informing public opinion exerts a drag on the efficient conduct of diplomatic business and introduces new levels of hypocrisy into the public justifications of statesmen for their policies (Nicolson 1969: 46). These costs, however, balance a great gain. He conditionally admits that “one of the great achievements of democratic diplomacy is to have abolished the pernicious system of secret treaties” (Nicolson 1969: 46). He uses the adjective “pernicious” in regard to secret treaties on more than one occasion (Nicolson 1998 [1954]: 7) and he also refers to “the curse of secret treaties” (Nicolson 1998 [1954]: 22). Elsewhere, he is less sure that they have been put an end to, entirely. Speaking of the Triple Entente’s secret commitments made to other states and movements to enter the First World War on their side, he notes that “in the heat of belligerency statesmen are apt to grasp at any bargain....

They have done so in the past. They will continue to do so in the future” (Nicolson 1965: 137).

As corroborative evidence, Nicolson notes that Wilsonianism did not put an end to what is identified in this chapter as Strategic Secrecy in diplomacy, as his own account of the Versailles negotiations clearly illustrates. He maintains that “few negotiations in history have been so secret or, indeed, so occult” (Nicolson 1969: 43). We know the Nazi-Soviet Pact of 1939 contained secret clauses. We may assume that so too do more routine agreements on issues like intelligence sharing. Nixon’s opening to China began with Kissinger’s famous secret visits. And today when developments in information and communication technologies have led some to question the possibility of secrecy in diplomacy, Obama’s administration has potentially achieved major accords with, and made major commitments to, Cuba, China and Iran by “undercover statecraft” (Landler 2014). Nevertheless, Nicolson’s hostility towards secret treaties echoed a developing norm to the effect that Strategic Secrecy was to be avoided and condemned when it occurred. Nicolson accepts the arguments that negotiating secret treaties was inconsistent with democratic values and just plain wrong in that it commits people without their knowledge. However he also regards Strategic Secrecy as a bad diplomacy or, more accurately, as bad for diplomacy. He presents the transition in the diplomacy of the Greeks from addresses before open assemblies to negotiating secret agreements in terms of a decline. He presents what he calls the Italian method of using deception and dishonesty following the advice of Machiavelli, as “destroying the ethics of negotiations”, and condemns what he terms the German attraction to “sudden diplomacy” as the “most dangerous” form of diplomacy (Nicolson 1998 [1954]: 7, 31; Nicolson 1969: 84). He does so, because in Nicolson’s view, the primary purpose of diplomacy is to create confidence, while Strategic Secrecy and even merely the possibility of it, are “major sources of diplomatic tensions” (Bjola and Kornprobst 2013: 24).

Why then do diplomats engage in Strategic Secrecy leading to unwanted developments like secret treaties? In addition to his argument that the great pressures under which people function in international affairs lead them into taking desperate measures on occasions, Nicolson offers two reasons. First he suggests that, in the years leading up to the 1914 crisis at least, the need for confidentiality in negotiation “did certainly create the habit of

secretiveness and did induce men of the highest responsibility to enter into commitments which they did not divulge” (Nicolson 1998 [1954]: 75). Second, however, he offers his famous distinction between foreign policy and diplomacy as the legislative and executive components of negotiation respectively (Nicolson 1969: 3). Diplomats negotiated secret treaties because that is what their political masters wanted them to do. He suggests that “The diplomatists for the most part were not to blame; they did what they were told” (Nicolson 1969: 41).

As a matter of historical record, this claim is on very shaky grounds and sounds like special pleading. It also implies a restricted view of diplomacy’s scope, which is clearly not present elsewhere in Nicolson’s work or in other commentaries in the classical tradition on new or modern diplomacy. However, the distinction that Nicolson offers between foreign policy and diplomacy makes an important contribution to the discussion of secrecy in diplomacy. Whatever position is adopted on the desirability or possibility of Strategic Secrecy, Nicolson makes it very clear that in his view what is identified in this chapter as Operational Secrecy is of great importance to the successful outcome of negotiations and the maintenance of good relations between states. It is his concern that Operational Secrecy not be lumped with Strategic Secrecy, and thereby lost, which drives his argument against new diplomacy in its purest form. In making it, he provides a useful context for framing the discussions of secrecy that take place in the classic commentaries that precede him.

Operational Secrecy

For Nicolson, Wilson’s formulation of “open covenants, openly arrived at” suggested a type of diplomacy that was certainly undesirable and probably impossible. Eden’s modification, “open covenants secretly arrived at”, in contrast, is not merely the best form of diplomacy for which we can hope (Sofer 2013: 37). It is positively desirable. Why so? The elements of an answer to this question are all present in the classic texts on diplomacy, especially where they deal with the qualities required to be a successful ambassador.

The classic texts are liberally sprinkled with expressions to the effect that secrecy is indispensable to the conduct of diplomatic relations. Callières begins his discussion of communications between the ambassador and his

sovereign with the following, “Secrecy, being the very life of negotiations”, or in some translations, “Secrecy is the very soul of diplomacy” (Callières 1983 [1715]: 164; Freeman 1997: 264). De Vera, too maintains that “secrecy is the soul of business”, meaning affairs and, in this context, the affairs of state (Berridge 2004: 91). Satow suggests that “Nothing is to be gained by taking the world prematurely in the confidence of governments in regards to matters of high policy” (Berridge *et al.* 2001: 134). “Negotiation”, he adds, “cannot be carried on upon the housetops” (Satow 2011b [1917]: 360). Jules Cambon maintains that the “day secrecy is abolished, negotiation of any kind will become impossible” (Freeman 1997: 264). And Adam Watson, while accepting the growing consensus against Strategic Secrecy, suggests that the “the confidential nature of diplomacy is and has been ... universal, at all times and in all places” (Watson 1983: 137). The need for secrecy is extended from the negotiations themselves by Wicquefort and Callières to the process by which political intelligence is obtained (Callières 1983 [1715]: 33, 80). Callières adds in regard to an ambassador’s instructions from his sovereign that “This writing ought to be kept secret, and is made only for the person to whom it is delivered”. Indeed, following Venetian practice, he suggests the possibility of two sets of instructions, one open and one secret and spends some time discussing the best sort of ciphers for communications (Callières 1983 [1715]: 132–64). De Vera suggests keeping women away from negotiations because they cannot keep secrets, and Callières suggests caution around them because they can distract (Berridge 2004: 15; Callières 1983 [1715]: 78). The focus here is on negotiations and, in part, the competitive character of negotiations. As Watson notes, you cannot do without a measure of secrecy in diplomacy just as “you cannot play serious poker if you keep your cards exposed on the table while some of the players hold theirs close to their chest” (Watson 1983: 139).

However, there is more to these discussions of secrecy. Operational Secrecy is often driven by competitive considerations to be sure, but it is also driven by collaborative ones – the first priority of an ambassador being, according to Callières “to labour to form a strict union” between his sovereign and the one to which he is accredited (Callières 1983 [1715]: 111). Especially in the late modern texts, secrecy shades over into notions of discretion, confidentiality and, in Nicolson’s case, in particular, the idea of creating and maintaining confidence. Satow, for example, notes the long

established practice by which sending states submit the names of new ambassadors to receiving states in secret, presumably to spare everyone concerned the embarrassments associated with rejection (Satow 2011a [1917]: 188). He also notes the dire consequences that can follow a breach of confidence by recounting what happened when the frank views of Dupuy de Lôme, the Spanish ambassador, regarding President McKinley and expressed in private correspondence, found their way into a New York newspaper. Both the ambassador himself and the American government asked for his recall, an outcome that the diplomatic indiscretions revealed by WikiLeaks have yet to match (Satow 2011a [1917]: 375).

Once again, however, it is Nicolson who makes these collaborative elements explicit and provides a framework within which to make sense of them. If diplomacy is “the art of negotiating agreements between sovereign states [then, at least as far as the diplomats are concerned] its purpose is to create international confidence, not to sow international distrust” (Nicolson 1919: ix). In this bourgeois form of diplomacy, as he terms it, one works for compromise rather than victory, and this is achieved by establishing relationships of trust based on accumulated reputational credit with others. With this credit, one is then able to exercise, in Jules Cambon’s phrase, “moral influence ... the most essential qualification of a diplomatist” (Nicolson 1969: 58). Nicolson maintains that diplomacy is characterised by “the exchange of written documents” frankly and precisely negotiated “it is not the art of conversation” (Otte 1998: 15). Jules Cambon, in contrast, maintains “a negotiation is like a conversation”. However, they are both driving at the same point. Without confidentiality, which from the outside can look like secrecy, one would run into a host of problems. Citing Louis XIV with approval, Nicolson maintains that diplomats negotiating in public will be distracted by concern for their own prestige and dignity. Cambon argues that it is impossible for one of the parties to negotiation to make its details public “without thereby harming or offending the other participant”. He adds that “to show the public the adversary’s hesitations, transactions, strokes and counter-strokes is to blow bridges behind him and often behind yourself as well, almost surely, to a total collapse of the process” (Magalhães 1988: 70).

Not only would the current negotiations be hurt, however, the reputation of the negotiator would be harmed. As the defenders of delay in the

publication of the Chilcot investigation have attempted to argue, to reveal details of secret conversations would be to breach the commitments that were conditions of those conversations being undertaken – in this case the commitment that exchanges between British prime ministers and the chief executives of other states remain confidential. As in other human relations, so in diplomatic relations, revealing past secrets and being known for doing so might make people reluctant to share secrets and speak frankly with you in the future (“Chilcot Inquiry: What You Need to Know” 2015).

It is possible, therefore, to identify a shift over time in attitudes to secrecy in the texts on diplomacy examined here. To begin with, any differences between the Strategic Secrecy of secret alliances and sudden diplomacy, on the one hand, and the need for Operational Secrecy in negotiations and communications, on the other, is barely apparent, and the need for secrecy in both senses is more or less taken for granted. In the later texts the distinction is more clearly drawn, Strategic Secrecy is broadly condemned, while Operational Secrecy is explained and defended. Indeed, both Nicolson and Cambon come close to presenting Operational Secrecy as necessary if the new, more open, conference diplomacy and democratic foreign policy are to be effective. As the Chilcot case suggests, however, the case for Operational Secrecy is not without its problems, especially in regard to the question of what or who exactly is being protected by maintaining confidentiality. In addition, other observations about secrecy in the classic texts suggest that it occupies a position in diplomacy that is both more complex and ambiguous than the distinction between the strategic and the operational varieties of it suggests.

The earlier modern texts especially provide a number of wrinkles that disrupt the smooth acceptance of secrecy, even in the pared down operational sense. Guicciardini, for example, considers the question of whether a sovereign should take his own ambassadors into his full confidence. He suggests that unless there were compelling reasons in terms of shortcomings in the ambassador’s character, then he should (Berridge 2004: 3). Nicolson draws similar conclusions about the obligations of a diplomat to his own political masters, saying that while they rarely engage in “intellectual inaccuracy”, they are prone to “moral inaccuracy” in the way they present unwelcome facts or views (Nicolson 1969: 58). Hold nothing back, for “Diplomacy, if it is to be effective, should be a disagreeable

business” (Nicolson 1965: 209). Gentili disapproves of the practice maintained by Venetian ambassadors of filing comprehensive final reports about affairs in the states to which they had been posted, and cites with approval how “the Emperors Honorius and Theodosius warned their ambassadors not to pry into the secrets of a foreign kingdom” (Berridge 2004: 64). Machiavelli warned that an ambassador should avoid “dissembling and [should] not be regarded as a man who believes one thing and says another” (Berridge 2004: 41). Guicciardini stressed the importance of being known as an honest man, if only because deception, which should only be attempted “in matters of gravest importance”, is easier to achieve when one enjoys such a reputation (Berridge 2004: 49). Callières warns against the error of “the mysterious gentlemen, who make a secret of everything, and magnify mere trifles” (Callières 1983 [1715]: 76). And Sofer notes, in a discussion of the importance of secrecy in diplomacy, the exception of how Grey and Paul Cambon agreed to share notes of their discussions with one another before making reports to their respective governments (Sofer 2013: 37).

Most of these examples can be rendered consistent with the emphasis on secrecy. Machiavelli and Guicciardini stress the importance of appearing honest and Callières the importance of avoiding silliness on matters that are trivial. All the examples can be rendered consistent with the emphasis on secrecy if the injunction to be open and honest is said to apply only in relations with those one trusts. However, they are much harder to reconcile with another important general theme in the classic texts, namely that diplomacy “should bear the impress of honesty, frankness and loyalty” (Satow 2011b [1917]: 361), and that the best diplomatic method available to governments is, in Jules Cambon’s phrase, “the word of an honest man” (Nicolson 1969: 28). “A lie”, Callières maintains, “is a thing unworthy of a public minister” (Callières 1983 [1715]: 152), and Malmesbury advises that a diplomat should never be caught out in a falsehood, for the gains made by falsehoods are “precarious and baseless” while, if discovered, then the diplomat’s honour and his court’s reputation “are both ruined” (Satow 2011a [1917]: 129). Even Richelieu, a founding father of the doctrine of *raison d’état*, proclaims that a minister should preserve his reputation for honesty and openness though the fortunes of his sovereign perish (Berridge *et al.* 2001: 78). Of course, the requirement to be honest does not equate to a

requirement for full disclosure, but it does exert a pressure in that direction, other things being equal. The general injunction to be honest casts secrecy in a different light, that of Nicolson's diplomatic impulse to create confidence. Then, for example, Grey's and Cambon's willingness to share their notes does not appear so much as, in Sofer's words, "a diametrically different and rare example" made possible by an unusual level of trust. It becomes part of a process in which trust is produced, in part by the willingness to share secrets. After all, Grey's and Cambon's trusting relationship did not simply exist as a reflection or manifestation of Anglo-French relations in general. It had to be developed. Presumably this involved some risk-taking. Grey at least, expressed regret on another occasion that the diplomats of 1914 had not been more willing to risk trusting each other (Butterfield 1953: 75). Even in the classic texts, therefore, the place occupied by secrecy is complex. It has a dialectical character – secrecy towards some often implies unusual openness towards others. It has an ambiguous character – it is presented as a necessity, yet reducing the need for it is proclaimed as a goal, both in specific diplomatic relationships and, ideally at least, in the diplomatic system as whole. And, as the final section of the chapter will show, it is treated not just as a practice in which information is intentionally withheld; it is also treated as a practice for intentionally conferring a particular status on certain things that are, in fact, known.

Official Secrecy

The idea of secret diplomacy implies a universe in which things are either known or unknown. Since the early nineteenth century, at least, inquiries into the philosophy and sociology of knowledge have steadily undermined this simple distinction. The results of their inquiries have steadily infiltrated popular consciousness to the point at which, for example, Defense Secretary Rumsfeld could make his now famous observation about "known knowns ... known unknowns ... and unknown unknowns" with, after initial hesitation, considerable public understanding (Rumsfeld 2002). While generally praising him for summarising a large, complex notion briefly and fairly clearly, critics commented that Rumsfeld had left out a fourth possibility, what Žižek refers to as "unknown knowns" (Žižek 2006: 137). By this Žižek means things that we refuse to acknowledge knowing because to do so would harm us in

some way. He is thinking of matters that are scandalously embarrassing. He cites the abuse of Iraqi prisoners at Abu Graib prison as an example. A more specifically diplomatic example would be the Iran-Contra scandal, in which members of the Reagan administration negotiated with members of the Iranian government about trading American arms and spare parts in return for Iranian cooperation in securing the release of American hostages in the Lebanon. In this case, the questions of who had permitted the actions that required secrecy, who had been denied knowledge of these actions, together with when and for how long, all took on diplomatic, political and eventually, forensic significance. It became clear in the subsequent investigation, however, that some people had known what was going on but had acted as if they did not, and indeed had acted to create the impression that they and others did not. It is in this sense of “unknown knowns” that I use the notion of Official Secrecy.

Official Secrecy does not pertain only to matters of embarrassment and scandal that have to be hidden, however. It also implies to situations in which openly acknowledging a state of affairs sets in train an unwanted process. Israel’s possession of nuclear weapons, unacknowledged by Israel, provides others with a difficult choice. Israel does not want to deny its possession of nuclear weapons, because it does not want to be caught in a lie, but also because it wants the possibility that it has them to enter into the calculations of others. Israel does not want to confirm it has nuclear weapons, however, because this will trigger a series of measures that the UN and many member states are committed to take when horizontal nuclear proliferation takes place. It does not want its friends to be faced with a choice of whether or not to support those measures and neither, for the most part, do they. A similar set of calculations lies behind the policy maintained by several navies of neither confirming nor denying whether their warships have nuclear weapons on board when they visit ports of other states. In both cases, the high probability that nuclear weapons are present is ignored by friends because they do not want trouble, because they are friends, and because they want to signal they are friends. A change in the policy of accepting an official secret, as when New Zealand demanded a clear answer before it permitted US warships to enter its ports can also be used to signal a change in the character of the diplomatic relations between those who offer and those who are invited to accept official secrets.

The difficulties that Official Secrecy suggests may be inherent in the idea of secret diplomacy are best illustrated by the very secret treaties that prompted a reaction to it. What is actually secret about secret treaties? The answer to this question is often very little in terms of their broad outlines. As Hamilton and Langhorne note, the “terms of the supposedly secret alliances of pre-1914 were pretty well-known, if sometimes in a dangerously garbled form” (Hamilton and Langhorne 2011: 67). The biggest secrets in a system of multiple and sometimes cross-cutting commitments might not be in regard to who has commitments to whom, but about which among these commitments will actually be invoked and acted upon. In a sense, this question is unanswerable, for no one, even the government in question, knows what it is going to do for certain until it actually does it. Germany could not get a clearer picture of whether Britain would live up to its commitment to uphold Belgian neutrality in 1914, for example, because the British themselves were unsure what they were going to do. For similar reasons, in 1940 Germany did not know if Italy would join it in the war against France in accordance with its commitments under the Pact of Steel. And today no one knows what “measures deemed necessary” under Article 5 of the NATO treaty actually commits its members to when one of their number is attacked. The claim that an attack on one is an attack on all sounds very strong while concealing, or leaving open, what is being promised in the event of such an attack. Sometimes, the distinction between what is officially secret and what is officially open completely collapses. One supposes, for example, that while Russian diplomats officially and openly deny the presence of their own troops in eastern Ukraine, thus keeping that presence an official secret, they unofficially and secretly confirm the presence of their troops in negotiations with NATO making the presence of those forces a secret that is unofficially known.

What then do the classic texts have to tell us about Official Secrecy? The answer is very little, or at least very little directly. We can infer from the presence of language about tact, discretion and confidentiality that these writers are well aware that Official Secrecy is as widespread a practice in diplomatic relations as it is in other human relations. Acknowledging that a colleague or host who loves to sing actually cannot sing, for example, or that someone who regards themselves as attractive actually is not, makes little sense if there is nothing to be gained by doing so and a great deal to be lost

in terms of damage to confidence in an important relationship. In such circumstances, fictions are to be maintained and the truths they conceal are to remain officially secret. And a reputation for being able to do this effectively is as much a diplomatic asset as it is a social one. So too is the ability to recognise the time and place at which an unknown or unofficial known is best transformed into one that is officially known. A mini-game of seeking and exploiting the leverage obtained by concealing, hinting at, and clearly revealing what one knows goes on within the wider games of conducting diplomatic relations and negotiations, albeit one that quickly shades into the requirements of espionage games and war games played with secret intelligence (Watson 1983: 65–6). Indirectly, however, we learn much from these hints about tact, discretion and confidentiality in the classic texts, and especially from the way they seem to haunt clear and insistent claims that an open disposition and an unerring commitment to being honest are also required of the successful diplomatist. In these terms, do the classic texts provide any more than Kenny Rodgers-like advice about the diplomatic equivalent of knowing when to hold, fold and walk away? They do, by signalling the profoundly ambiguous nature of diplomacy, but they do so in a way that allows them to retain a great deal of what Alan Dulles referred to as “plausible deniability” (Colloff and Hall 1998). Sir Henry Wotton’s professional fate following his witty indiscretion is instructive regarding what can happen to those who speak too honestly about dishonesty (Black 2011: 59). In a sense, the classics’ treatment of secrecy itself takes the form of an official secret, especially in the later texts. Like the owners of a dangerous dog they would like to keep, they join the critics in officially decrying abuses of the breed, while simultaneously promising to muzzle and corral their own dog so they can keep it.

Conclusion

One cannot learn everything that one would want to know about secret diplomacy from the late modern texts alone, but one can learn a great deal. They are particularly thin in regard to official secrets and the complex context of ideas with which later generations have necessarily burdened themselves regarding what it means to know things, not to know things, and to be denied knowledge of things. One senses, however, that very few of the

insights produced by a more explicitly reflexive era than theirs would greatly surprise them. Most of the authors of the classic texts would probably regard these insights as obvious, at least to those of sufficient intelligence, tact and sensibility to recognise what particular diplomatic situations demanded, without having it spelled out to them. The late modern texts are not strong on the distinction between Strategic and Operational Secrecy, at least not until the general attack on secret diplomacy after the First World War forced them to offer an explicit defence of those bits of secrecy for which general support might be salvageable. In offering their defence, however, writers like Nicolson and both Cambons tend to take back with the left hand what they have given with the right by maintaining that the distinction between old diplomacy and new diplomacy is overdrawn. They accept the democratic argument that secret alliances are pernicious, but then argue that they always have been. Such alliances are examples not of old diplomacy and secret diplomacy so much, as examples of bad diplomacy. It is clear that what they are prepared to jettison of secret diplomacy is very small compared to what they argue must be retained. The late modern texts also do not provide us with a very strong case for why secrecy is a requirement of diplomatic relations in particular. It is presented both as obvious and as resulting from the fact that diplomacy is conducted between sovereigns who operate in a world of little or no moral constraint. The result of this, however, is not so much an argument for secrecy in diplomacy as an argument for doing whatever it takes – including being honest and open on many occasions.

Finally, and for obvious reasons, the late modern texts have very little to tell us about the specific ways in which the appearance of large amounts of cheap, accessible information affects the technique of diplomacy. What they do tell us, however, is to be very sceptical about claims like the one made by Margot Selzer at Davos in 2015 to the effect that “privacy is dead” (Carter 2015). Instead, they present a world in which we should not be surprised that there are always people trying to keep secrets, there are always people trying to discover them, and there are always people who get caught out, whether by their efforts to conceal, or by their ignorance of, a secret. In addition, the late modern texts present powerful arguments for why we should regard the practice by which governments, and increasingly others, intentionally conceal information from other governments, the media and

the public as sometimes necessary, often valuable, and always inescapable. If this is so, then we should expect the current era in which the balance of technical advantage lies, as far as we know, with those who seek to discover and make public diplomatic secrets, to be as transient as previous eras in which the advantage lay with the diplomatic secret-keepers.

Notes

- 1 By classic texts I refer to those that focus on the diplomacy of sovereign states as this developed in Europe from the late fifteenth century. I will employ Berridge's distinction between early modern (fourteenth to seventeenth centuries) and modern (eighteenth to twentieth centuries) theorists. I will also refer to contemporary theorists who can clearly be seen to be working in the classical tradition, often defending diplomatic practice as this evolved into what was known as "modern" or "old" diplomacy by the end of the long nineteenth century. The defenders of this sort of diplomacy often present it as a civilised, and possibly the *civilised* way of conducting international affairs.
- 2 By "new diplomacy" I refer to the general movement after the First World War towards making the conduct of diplomacy more open, preferably through negotiations and conferences producing public agreements to be registered with the League of Nations. By "old diplomacy", I refer to a sense of diplomacy being conducted primarily in secret, bilaterally and by professional diplomats. Nearly every writer on diplomacy agrees that in practice the distinction between the two is overdrawn and that no sudden shift occurred from old diplomacy to new diplomacy after the First World War. Rather, a transition from less closed to more open diplomacy is generally acknowledged to have taken place, although the extent to which it has done so remains contested.

3 The social neuroscience of secrets in secret diplomacy

Theorising secrecy diplomacy¹

Marcus Holmes

Introduction

Secret diplomacy, in its most standard formulation, involves diplomacy conducted in the absence of media and public attention (Bjola 2013: 2; Gilboa 1998: 213; Bjola and Murray this volume). This may include a lack of prior knowledge about the diplomacy to be conducted, lack of insight regarding activities currently being practised, or secrecy regarding the historical nature of diplomacy already conducted (Berridge and Lloyd 2012: 336). By way of contrast, open diplomacy, as laid out by US president Woodrow Wilson in a 1918 speech to Congress after the First World War, calls for “open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view”.² Despite its prevalence, be it in the Oslo Accords in 1993, the Cuban Missile crisis in 1962, or the Soviet Union’s secret interactions with China over the Chinese Eastern Railway in the 1920s, secret diplomacy has been difficult to explain, particularly in rationalist models of political action.

From a rational or strategic choice perspective,³ secret diplomacy is particularly puzzling. The reason is that in the absence of audience costs, diplomatic communication is viewed as “cheap talk” (Fearon 1995; Fey and Ramsay 2011; Tingley and Walter 2011; Tingley 2014). In order to be taken

seriously, diplomatic communications are believed to require some type of cost attached to them in order to prevent dissembling and backing down from previously made commitments (cf. Tomz 2007). Since secret diplomacy, by its very nature, is held without the public involved, thereby bracketing the possibility of an audience cost, it is not clear how secret diplomacy could ever convey information that is not of the cheap variety, unless there is some other type of cost involved.⁴ In rationalist terms the problem of secret diplomacy is a problem of signalling: how can information transmitted in secret ever be credible?

In this chapter I explore the logic of secret diplomacy from a rationalist perspective, which suggests that there are many forms of secret diplomacy with varying degrees of signalling problems (and solutions) attached to them. I create a typology of secret diplomacy with two key dimensions of emphasis: how much of the diplomacy is kept secret from the public *and* how much of the trip is kept secret from one's own government. While much of the diplomacy literature has focused on the former, there has been a lack of attention on the latter. This is important because diplomacy may be kept secret from the public and one's own government for different reasons, as I will develop below. Second, in conceptualising secret diplomacy I take the actual *secrets* that statesmen keep seriously. I provide a conceptualisation of what secrets are, how they operate in world politics and how they can be detected in interpersonal diplomacy. This aspect of what I term *secrecy diplomacy*, using diplomacy to detect the concealed information of others that they wish to remain concealed, further differentiates a specific form of secret diplomacy, and suggests how it differs from other forms of secret diplomacy, such as private or clandestine diplomacy.

Bringing these two strands together, ultimately I argue that leaders and diplomats often possess an intuition that the best way to obtain secrets from another leader is through interpersonal diplomacy (Holmes 2013).⁵ And, crucially, leaders are savvy enough to realise that if *they* possess the perspective-taking capability then it is likely that *other leaders do as well*. By engaging in interpersonal diplomacy leaders are gaining the ability to read the secrets of others *but also potentially giving their counterpart the same ability*. That, I argue, is a type of cost (and it may be a very significant one). Therefore ultimately my argument is that secrecy diplomacy is a type of

costly signal. Yet, it is not the same type of costly signal of which rationalist models typically conceive.⁶ The cost paid is that by engaging in secrecy diplomacy individuals are potentially putting their cards on the table for the other leader to see, even though they are gaining the ability to read the cards of the other.

Second, and importantly, this cost may be exacerbated by the lack of a public audience because the leaders do not need to give public reasons for the impressions and beliefs engendered in secret, and therefore leaders may seek to make secrecy diplomacy secret. Secrecy diplomacy does not take place in a public sphere and therefore we should not expect public claims.⁷ Justifying subsequent action, in other words, is easier when you do not have to give public reasons, such as in a press conference following the meeting, for one's beliefs. Yet, as I demonstrate, the public's lack of knowledge of the diplomacy is often not as important as one's own government's lack of knowledge, which can serve as a necessary condition for the trip. This is because leaders are fearful of having to justify secrecy diplomacy, however legitimate it may be, to politicians who may have the ability to prevent such a diplomatic initiative. Put simply, the risk of bringing others into the loop, when the aim of the trip is to read the secrets on the face of another leader, often is too great to justify their inclusion in the initiative.⁸

In what follows I briefly examine existing approaches to the problem of secret diplomacy and develop my own contribution of secrecy diplomacy as a costly signal. In doing so I demonstrate that findings from neuroscience and cognitive psychology apply to international diplomacy since they help to establish the conditions under which such perspective-taking is possible. Put simply, leaders are not wrong that secrets can be picked up on in interpersonal diplomacy. Ultimately by understanding how secrecy diplomacy works we are better equipped to understand and explain the purpose, methods, and agency of secrecy in world politics.

Secret diplomacy: understanding variations and their theoretical problems

Rationalist models of diplomacy tend to either reduce diplomacy to structural factors, coercive bargaining, or explain the practice of diplomacy as a form of signalling. With respect to the former, Brian Rathbun (2014) has argued persuasively that rationalists tend to view the outcomes of diplomacy as endogenous to structure. Powerful states drive hard bargains for weaker states; weaker states have little choice but to capitulate or, perhaps, derive some type of side payment or compromise from the interaction. From this perspective the negotiations that occur in diplomacy are more or less congruent with the distribution of power. As Rathbun (2014: 1) argues,

Diplomacy is given little attention in international relations scholarship because of the structural bias of the discipline. Diplomacy is a process that individuals engage in.... If its successes or failures are merely a function of the larger geopolitical environment, then diplomacy per se is essentially unworthy of study. If power is the only currency in international politics, a focus on diplomacy adds little value to our understanding of international affairs.

To the extent that diplomacy is relevant, it is in making threats and exploitation of leverage in order to gain what they desire (Rathbun 2004: 4). At the end of the day, these perspectives argue, diplomacy is mainly epiphenomenal to other, more important, factors (Rathbun 2004: 23).

Yet, diplomacy is perhaps the most ubiquitous practice in world politics. Why bother if it is reduced simply to structure? Rationalist approaches address this puzzle by suggesting that policymakers engage in diplomacy because they want to be able to convey information – typically regarding their state’s type, level of resolve, honesty, intentions, or war aims – to another state. The difficulty is two-fold. First, under anarchy there are incentives to dissemble and thus any received signal must be viewed somewhat sceptically by the receiving state as it is potentially just cheap talk (Waltz 1979; Fearon 1994, 1995). This is exacerbated by the “problem of other minds”, which suggests that it is difficult, if not impossible, to get inside the minds of others in order to understand their intentions (cf. Wendt 1999, 2015; Mearsheimer 2001, 2011; Bourne 2013; Holmes 2013). Second, even if one could credibly convey intentions, they are always susceptible to change

(Copeland 2000; Mearsheimer 2001). The problem of the future, in other words, looms large, meaning that it is very difficult for prudent statesmen to trust what is conveyed in diplomacy. A way around these two problems is for policymakers to make their signals public, which allows a cost, either ex ante or ex post, to be created (Fearon 1997; Schultz 1998; Ramsay 2004). The logic here is that statements made in public provide some credibility because there are costs for the policymaker who makes them, since they presumably would suffer politically from not staying the course (Schultz 1998; Smith 1998; Weeks 2008). The audience cost provides a hands-tying mechanism (Schelling 1960, 1966). This creates a puzzle for secret diplomacy: in the absence of audience costs, why would leaders bother engaging in private diplomacy?

One reason may be that the audience cost as credible signal argument is not as robust as previously believed. For instance, Jack Snyder and Erica Borghard (2011) note that audience costs are rare because leaders have little incentive to make unambiguous threats. Rather, anticipating future problems, leaders choose their words carefully and attempt to maintain deniability. Recent criticism regarding president Barack Obama's "red line" remark to Syria demonstrates the logic of this argument. As pundits and policymakers alike pointed out, such as former defense secretary Leon Panetta, the use of a specific unambiguous drawing of a red line against Syria's chemical weapons programme, followed by inaction when Syria crossed the line, likely serves to damage the president. As Panetta argued, "It was important for us to stand by our word and go in and do what a commander in chief should do".⁹ The implication here is that Obama likely did pay an audience cost, with respect to his and the country's credibility. It is also the type of episode that is noteworthy precisely because of its relatively unique nature. The incentives for making clear threats simply are often not large enough to warrant the action (cf. Byman 2013) and it is not necessarily clear that voters punish inconsistency. Similarly, the empirical literature, both qualitative and quantitative, finds weak evidence for the notion that the audience cost mechanism plays a major role in crisis bargaining (Downes and Sechser 2012; Trachtenberg 2012) as well as more generally (cf. Kertzer and Brutger 2015; Driscoll and Maliniak forthcoming).

Nevertheless, regardless of their historical importance, if leaders believe or expect some domestic politics pressure then they may find themselves in a prisoner's dilemma situation where both sides seek diplomatic manoeuvring in private as a way to prevent making public demands (Levenotoglu and Tarar 2005). Additionally leaders may suffer costs from domestic audiences, not because of backing down, but because of expected ex ante costs that stem from the pursuit of foreign policy "behind their backs" (Yarhi-Milo 2013: 410). As Daniel Lieberfeld argues, the Oslo Accord in 1993 required secrecy precisely because neither the Palestinian Liberation Organization or Israel would likely have negotiated in public due to domestic political constraints (Bjola 2013: 3; Lieberfeld 2008). Additionally leaders may be savvy enough to realise that their counterpart may face humiliation or "lose face" by backing down and therefore will choose to make private, rather than public, threats for efficiency reasons (Kurizaki 2007). Leaders may also rationally believe that secret diplomacy can "[insulate] leaders against grandstanding", since the public platform is removed (Bjola 2013: 3) and consequently potentially lower the costs of failed talks by lowering the expectations and stakes attached to the talks.

Therefore the first type of secret diplomacy, where leaders keep their initiatives secret from the public, is essentially a form of *private diplomacy*. Leaders engage in it for a variety of reasons and since costs can be conveyed in the absence of an audience, and leaving the public out of the equation provides significant benefits to leaders under certain conditions, it can be a particularly useful form of interstate communication.

But what about instances where it is not just the public that is ignorant of the diplomacy but one's own government is left in the dark? *Clandestine diplomacy* occurs in the absence of both public *and* private governmental knowledge of initiative. Under what conditions would a leader choose to keep diplomacy from his or her own government? Most often, statesmen may wish to avoid opposition within one's own government, instead preferring the path of least resistance toward a particular goal. Policymakers that do not inform their governments of a diplomatic trip may be able to postpone criticism and pushback, which could derail a diplomatic initiative before it begins. Clandestine diplomacy also provides the ability to create plausible deniability. Neville Chamberlain in 1938 famously kept the plans for a visit to Adolf Hitler, the so-called "Plan Z", which would be put into

practice if war seemed inevitable, secret from many in his government. The idea of the plan was that Chamberlain would be able to determine from Hitler what his actual intentions were, and perhaps, convince him of an alternate strategy if necessary (cf. Holmes 2013). There were many reasons for the secrecy, including the desire to increase the dramatic effect of the diplomacy when it would be finally announced. But more importantly, Chamberlain understood that there were powerful members of government, such as Duff Cooper, first lord of the admiralty, who would likely oppose such a trip. The notion of traveling to negotiate with Hitler was anathema to deterrence, the preferred policy solution of many in London. Chamberlain thus quietly put together an inner sanctum of advisors that he believed he could trust. As David Reynolds (2009: 47) argues, “with the crisis mounting, [Chamberlain] shifted decision making into channels that he felt confident that he could control”. Plan Z would remain a clandestine operation until it was ready to be launched.

There is another reason why policymakers may wish to keep their diplomatic initiatives secret from their own governments, including even supporters and like-minded coalitions. Despite the significant attention paid to the costs of diplomatic signals, there is reason to believe that non-costly signals can be credible as well, though it may be difficult to convince sceptical policymakers that this is the case, which provides a reason to keep the initiative secret from one’s own government. As Robert Jervis (1970) has argued, there may be information about intentions that can be gained through information that is transmitted beyond the control of the sender (what Jervis terms an “index”). For example, recent studies have argued that face-to-face interaction provides a mechanism for individuals to understand the intentions of others through expressive behaviours (Hall and Yarhi-Milo 2012; Holmes 2013; Yarhi-Milo 2014). In particular, the existence of mirror neurons, which serve to simulate the intentional mental states of the target in the recipient, may provide a way for individuals to reliably understand sincere, shielded and deceptive intentions of others, thereby overcoming the “problem of other minds” (Holmes 2013). Importantly, these mechanisms become credible non-costly signals because they are difficult, if not impossible, for the sender to control, thereby suggesting that information is transmitted even when the sender does not want it to be, and does not rely on a typical rationalist cost, such as the presence of an audience. They allow,

in other words, for the detections of secrets, the concealed information that leaders wish to keep close to the chest, to be made available to the received. Therefore, from this perspective, leaders do not necessarily need to associate a cost with a diplomatic visit in order to give credibility to the information conveyed. The difficulty comes, instead, in communicating the salience of these processes to sceptical government officials.

I term this type of diplomacy as *secrecy diplomacy* because of the dual nature of the secrets involved: the diplomacy is kept secret from one's own government and the nature of the diplomacy involves deriving the secrets of others. Secrecy diplomacy is kept from the public and government officials not because of a concern regarding audiences, and the costs associated with audiences, but because of a concern regarding justification. The leader who wishes to travel to meet another leader in order to derive their secrets, be they intentions or a more general sense of the other, must not only convince his or her government that the benefits of the trip outweigh the costs (particularly if the exercise in diplomacy were to be deemed a failure) but also must convince government officials of the logic of personal impressions, never an easy task, particularly if they are predisposed to diplomacy scepticism, either because they are dubious about the abilities to read important information from others, sceptical that diplomacy can resolve conflicts, or believe that diplomacy is largely irrelevant compared to more important structural factors.¹⁰ This is not to suggest that there are not other reasons why diplomacy may be kept from one's own government, such as for plausible deniability reasons or operational efficiency, but rather secrecy diplomacy is one prevalent ideal type. Ultimately secrecy diplomacy aims at learning the secrets of the other while keeping the trip secret from decision-makers who have the ability to prevent it from happening.

Returning to the Munich example, consider the predicament in which Chamberlain finds himself. He may well believe that "you could say more to a man face-to-face than you could put in a letter" (Reynolds 2009: 47) and that he could remove doubt regarding Hitler's intentions by visiting with him personally; convincing government officials who support a policy of deterrence, rather than appeasement, on the other hand is a different matter.¹¹ The concern for Chamberlain is not just that he himself must

believe that he can read Hitler's inner-most secrets regarding his intentions, but *also* that he can convince sceptical government officials of that capacity.

Finally, two other types of diplomacy are worth mentioning in order to provide context to private and clandestine diplomacy. As alluded to earlier, *open diplomacy* is conceived of as the antithesis of private diplomacy, where full knowledge of the diplomatic activities are known both by one's own government and the public. *Leaked diplomacy* is the relatively rare instance where the public is aware of diplomatic activities of leaders that one's own government is not. This ostensibly could occur through information being leaked to the press, as in the WikiLeaks scandal (cf. Wichowski 2015). Here secrets and knowledge of diplomatic activities are known by the audience (the public) without one's own government knowing about it, creating a type of diplomacy dramatic irony.

Based on these ideal types we can delineate a typology of secret diplomacy activities, where one axis is defined by the extent to which the public is aware of the trip (a continuum between full announcement/press conference and complete secrecy) and the other axis is defined by how much one's own government is aware of the diplomacy (a continuum between only the leader knowing and full announcement to the Cabinet/Congress, etc.). It is important to note that this typology has inherent limitations. First, other important dimensions are also of critical importance to secret diplomacy, such as the temporal dimension. In any given diplomatic encounter there may be moments in time when the public is unaware at t_1 but becomes aware at t_2 . Similarly one's own government may be left in the dark at t_1 but made aware shortly before the initiative is to begin at t_2 . These subtle, but important differences in the timing of who is notified *and when* of diplomatic engagement can move private diplomacy to open diplomacy very quickly. Second, many diplomatic initiatives contain different levels of openness over that temporal dimension. A summit meeting will often have a public component followed by a private component, the details of which may not be made public for some time (if ever), further complicating the typology. Nevertheless the following representative typology helps to clarify two important dimensions in the various forms of what is termed secret diplomacy:

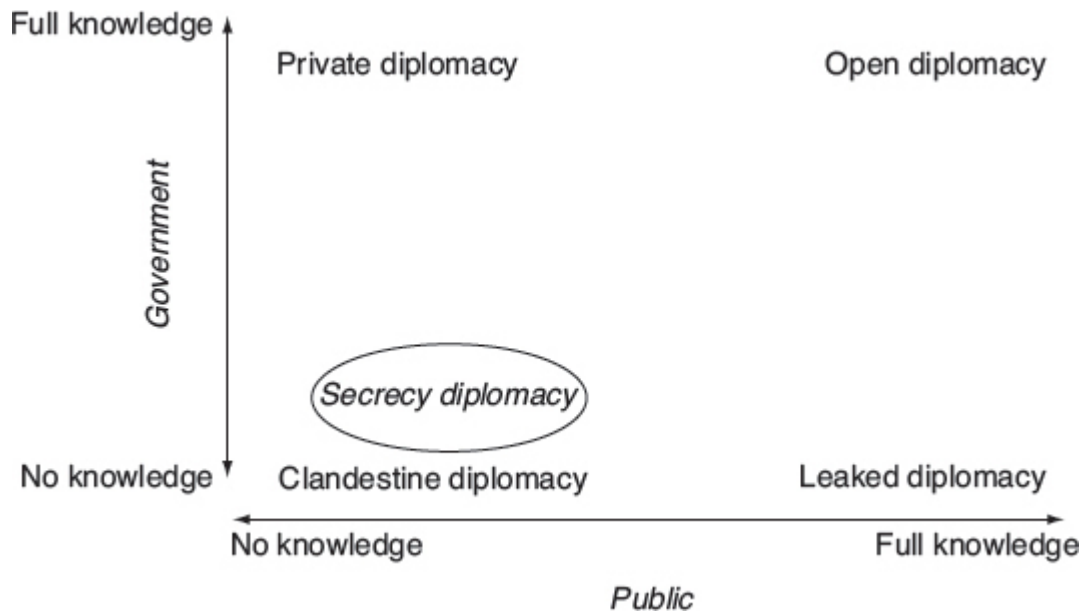


Figure 3.1 Secret diplomacy typology.

Having identified the various types of secret diplomacy, we can investigate the logic of a particular form that has not received significant attention, secrecy diplomacy. In particular I will suggest that combining the notion that diplomacy often requires a cost to be credible and recent studies that suggest that individuals can credibly transmit information without cost in face-to-face interactions, secrecy diplomacy is an important costly signal. It is a costly signal not because of audience concerns but because leaders are aware of their own abilities to read the intentions of others and are also aware that other leaders likely possess this same ability, though potentially to a lesser degree. Engaging in face-to-face diplomacy means, in other words, that leaders are transmitting information to their counterpart even when they do not intend to, they know that in doing so a significant cost has been created, but they believe the benefits derived from their own ability to read others outweighs that significant cost.

Secrecy diplomacy as a costly signal: reading secrets

What are secrets?

Secrets are ubiquitous in international politics, yet we do not as of yet have a unified and comprehensive theory of secrecy.¹² A leader who authorises a

covert drone strike in a foreign land is exercising secrecy. A diplomat who engages in negotiation with another diplomat at the World Trade Organization and keeps her alternatives close to the chest is similarly engaging in secrecy by not disclosing her reservation price or best alternative to negotiated agreement. A leader in a democracy who does not reveal a torture programme to the polity is engaging in secrecy. One reason why a comprehensive theory of secrecy may not exist is the nature of the enterprise. Secrecy, by definition, implies activities that are undertaken outside of public view, and therefore may be inaccessible to policy-makers and scholars alike. It is, after all, difficult to construct a theory based on the unobservable. On the other hand, a different aspect of secrecy makes it particularly amenable to study: secrets are often revealed in time. In each of the cases mentioned above, secrets may become observable once an action is taken: the drone strike occurs, true trade preferences are revealed through behaviours, and the torture programme comes to light. This unique nature of secrets, where they move from unobservable to observable, provides scholars with an ability to assess why the secret was created in the first place, how it functioned in political interactions, its effects, and how they were revealed (on the use of secrets in a post-hoc fashion, see for example Grynaviski 2014: 76). It is therefore surprising that a comprehensive theory has not emerged.

Secrecy is defined by the *intentional* strategy of an actor withholding information from a target. The secret is thus defined not just by the information itself but the intentionality behind withholding that information. The actors and targets involved with secrecy can be individuals, groups, firms, states, non-governmental organisations, international institutions, and so forth. For the purposes of this chapter, where the focus is on the diplomatic practices of secrecy, I will limit the discussion to the individual-level of analysis. As intentional acts, secrets among individuals are best conceived of as *intentional mental states*. This distinguishes secrets from unintentional omissions, for example. A diplomat who leaves information unstated because he or she is forgetful does not satisfy the intentionality condition. Similarly, slip-ups where individuals unintentionally mischaracterise information, for example, do not meet the intentionality condition. Secrets, while normally strategic, can vary on the extent to which they are nefarious in nature. Deceptive statements are secrets, since they intentionally withhold correct information while

providing incorrect information. These may also vary from lies to subtle distortions of the truth. Lastly, secrets may be selectively secret. That is, individuals may wish to disclose a secret to particular individuals, at which point the disclosure is essentially “out in the open”, since the actor can no longer control the withholding of the truth from traveling through a network of other actors.

Perhaps the most comprehensive theory of secrets in interpersonal interaction, and therefore quite relevant for diplomacy, comes not from a scholar of international relations but rather a social theorist, Erving Goffman. Goffman (1959, 1963, 1967; see also Schimmelfennig 2002) pointed out decades ago that social, and presumably political, everyday life operates according to a dramaturgical logic, where individuals act in front of others on the “frontstage”, while simultaneously keeping hidden many of their desires, beliefs, intentions, and so forth, on the “backstage”. This amounts to “impression management”, an activity that individuals take seriously in their attempt to cultivate identities and particular images that are projected to others. The upshot of Goffman’s perspective is that much of our social life is constituted by secrecy to varying degrees. Secrets are not abnormal, but are rather the norm. And picking up on the secrets of others is also not abnormal.

Reading secrets

At the individual level secrets, as intentional mental states, may be accessible to others, and to varying degrees, in interpersonal interaction.¹³ This is not a particularly new insight. As Jervis (1989: 32–33) argued 40 years ago, building off the insights of Goffman discussed above, personal face-to-face interactions provide a unique opportunity for leaders to glean information about the other.

When an actor is able to directly observe one of his adversaries he will not only try to understand the other’s general outlook, but also scrutinize those presumably uncontrolled aspects of personal behavior that are indices to the adversary’s goals, estimate of the situation, and resolve.

This process of trying to read others in personal interactions takes on a particular importance because leaders often believe “that their rise to power was partly dependent on a keen ability to judge others” (Jervis 1970: 33). This is not a point that is lost on leaders in other industries. Business process theorists, who spend significant time and energy attempting to find strategies that will maximise returns in negotiations, have argued that “lying, fraud, sabotage and other anti-social actions are hard to detect in electronically mediated exchange. Without the full bandwidth of face-to-face communication, how can you tell whether someone is being profoundly sincere or totally deceptive” (Nohria and Eccles 2000: 1669). As John King notes, “Free riders, log-rollers, back-stabbers, and other vermin are much more easily rooted out when subjected to the sensitive noses of the angry wolfpack, *in vivo*” (Nohria and Eccles 2000: 1670).

Surveys of business executives echo these findings. One study that interviewed over 750 executives noted that the majority preferred face-to-face business meetings largely because of the ability to read body language and facial expressions (77 per cent). Further, face-to-face scored highly among executives with respect to the ability for persuasion (91 per cent) and accountability (79 per cent) (Rizy *et al.* 2009), echoing Jervis’ point about the perceived value of interpersonal interactions among leaders. Business negotiation studies suggest that the intuitions these executives possess has some merit. For example, comparisons between face-to-face environments and online negotiation platforms show distinct behavioural differences in the face-to-face condition relative to other modalities, such as an online auction (Moramarco *et al.* 2013). Further, those that negotiate online have a more difficult time trusting each other than those who engage in face-to-face negotiation. The reason for this may have to do with the difficulty of understanding intentions in the online context (Naquin and Paulsen 2003; Rockmann and Northcraft 2008). The cues associated with cooperative intentions, including pitch and cadence of voice for example, are difficult to convey in non-face-to-face communication modalities (Ekman 1992). Studies also indicate that e-negotiators engage in more deception and less truth-telling than their counterparts interacting face-to-face (Rockmann and Northcraft 2008).

While the insight that personal interactions give clues to mental states is not particularly new, the social psychology and cognitive neuroscience

supporting that intuition is relatively new.¹⁴ Paul Ekman (2009), a psychologist who specialises in deception detection, argues that the keys to detecting deception and secrets often lay in the face. First, from a perception perspective, recent neuroscientific insight suggests that looking at, recognising, and understanding intentions and other concealed information from faces occurs in specialised areas of the brain that are designed to help us perceive them (Iacoboni 2008). We know this, in part, because some individuals are born without this ability to recognise faces, a condition called prosopagnosia. Others gain this affliction through brain damage to the specialised parts of the brain that aid in facial recognition (Meadows 1974). At the other end of the scale are individuals who have a surplus of neurons in these regions, so called “super-recognisers” who “never forget a visage” (Gaidos 2013).

Second, and more directly related to secrecy, the face is often a window to emotions.¹⁵ This is because the amygdala, implicated in the processing of emotion in the brain, also contains neurons that respond to faces (Adolphs *et al.* 1994). Just as one’s heart may race when a fear emotion is triggered, so too will one’s face often exhibit a particular expression. When emotions are implicated, facial muscles and their associated neurons will fire involuntarily, just as heart rate increases involuntarily. This is a particularly important aspect of empathy. In order to understand others, social creatures must be able to understand each other both cognitively and affectively. Neuroscientists hypothesised that the mirror neuron system, or mirroring system, plays an important role in allowing individuals to “feel” the emotions of others when looking at their faces by imitating the emotion in their own body. On this view, emotions are not only reflected in the face, but individuals are able to feel the emotions of others by simulating, through observation, the emotional experience another is going through. As Marco Iacoboni (2008: 120) argues, “this simulation process is not an effortful, deliberate pretense of being in somebody else’s shoes. It is an *effortless*, automatic, and unconscious inner mirroring”. Similar work on the links between emotions and facial expressions suggest that this simulation often occurs at a “micro” level. Micro-expressions are very brief involuntary facial expressions that accompany an emotional experience. Unlike other types of facial expressions, they are difficult to control and therefore allow

individuals to experience the emotional states of others. Micro-expressions therefore might serve as a type of “honest signal” of an individual’s mental states.¹⁶

Finally, as Robert Frank (1988: 136–7) has argued, many of the expressive clues to deception become available through repeated exposure; “it takes time to recognize a person’s normal pattern of speech, gesturing, and other mannerisms”. This suggests that distinguishing honest cues from fake ones is likely conditioned by experience with that particular individual. And individuals themselves vary in their ability to perceive deception through expressive cues. Deception detection is partially related to emotional and social intelligence (cf. O’Sullivan 2005: 237), a type of intelligence that refers to the ability to understand one’s own, and others’, emotional states and the capacity to successfully navigate social relationships (O’Sullivan 2005: 248). Indeed, the best individuals at detecting deception are those that score highly on emotional intelligence measures and consequently are able to interpret non-verbal cues accurately (O’Sullivan 2005: 248). Interestingly, some studies suggest that successful leaders in general possess high levels of emotional intelligence (Goleman *et al.* 2002). All of this suggests that there is variation in deception detection and there is reason to believe that leaders, all else being equal, may be in a better position than most to pick up on it.

Put another way, in face-to-face interactions leaders are simultaneously presenting two images to the other: what they wish to show and what they wish to conceal:

The true, felt expressions of emotion occur because facial actions can be produced involuntarily, without thought or intention.... The face is a dual system, including expressions that are deliberately chosen and those that occurs spontaneously, sometimes without the person even aware of what emerges on his own face.

(Ekman 2009: 123)

This resonates with Erving Goffman’s (1959) previously mentioned argument about inferring truth about individuals through social interactions:

When an individual enters the presence of others, they commonly seek to acquire information about him or to bring into play information about him already possessed.... Information about the individual helps to define the situation, enabling others to know in advance what he will expect of them and what they may expect of him. Informed in these ways, the other will know how to best act in order to call forth a desired response from him.

For the present, many sources of information become accessible and many carriers (or “sign-vehicles”) become available for conveying this information. If unacquainted with the individual, observers can glean clues from his conduct and appearance which allow them to apply their previous experience with individuals roughly similar to the one before them or, more important, to apply untested stereotypes to him.... [T]he “true” or “real” attitudes, beliefs, and emotions of the individual can be ascertained only indirectly, through his avowals or through what appears to be involuntary expressive behavior.

Or, as Solomon Asch put it over 50 years ago,

We look at a person and immediately a certain impression of his character forms itself in us. A glance, a few spoken words are sufficient to tell us a story about a highly complex matter. We know that such impressions form with remarkable rapidity and with great ease. Subsequent observations may enrich or upset our view, but we can no more prevent its rapid growth than we can avoid perceiving a given visual object or hearing a melody.

(Asch 1946: 48; quoted in Todorov *et al.* 2015)

What makes truth or secrecy detection possible is that we have the capacity to differentiate expressions that are involuntary, to which Goffman alludes, from those that are controlled through intention (Hill and Craig 2002).

This is not to say that secrecy detection is easy. What makes detection difficult is that there are thousands of facial expressions that are different from each other and have nothing to do with emotion or lying at all. As Ekman points out, “there is not one expression for each emotion but dozens and, for some emotions, hundreds of expressions” (Ekman 2009: 123). In

order to accurately detect a secret, one has to be able to pull out an informative micro-expression in a sea of non-useful expressions. Further, while emotional expressive behaviour and micro-expressions are important to the detection of secrecy, there are other strategies individuals use as well. Ekman identifies 22 specific clues to deceit and the information that they may reveal. These include tirades, which may reveal shielded information not linked to a particular emotion, micro-expressions discussed above that may link to a specific emotion, facial reddening, blanching, etc. Each of these offers a clue to the reader of intentions about whether information is being concealed.

Empirically, a meta-analysis of deception finds that while, in general, individuals perform better than chance at picking out deception, it is difficult (Bond and DePaulo 2006). A recent meta-study found an overall lie-truth discrimination ability at roughly 54 per cent (Bond and DePaulo 2006: 230). Secrecy detection is difficult, but it may not simply be a game of chance either. There are three important points to consider. First, with minimal training on micro-expressions and facial clues to deceit, individuals are able to increase their rates of deception detection substantially (Frank and Feeley 2003). Second, if there is a medium that facilitates secrecy detection, it is face-to-face interaction. Psychologists have long known that, while it is difficult to detect deception, face-to-face interaction makes it easier to do so, because individuals can utilise nonverbal behaviour in making judgments about deception. Economic models of exchange often emphasise face-to-face engagement as a truth-detection device. As Storper and Venables (2004: 356) put it, “for complex context-dependent information, the medium *is* the message. And the most powerful such medium for verifying the intentions of another is direct [face-to-face] contact”. People with the best deception-detection skills rely on nonverbal cues more than verbal ones.

Relatedly, psychopathy has historically been characterised by a lack of empathy or lack of affect (Hare 1999; Lockwood *et al.* 2013). Importantly, however, psychopaths also often possess an innate ability to manipulate others because they often have superior perspective-taking abilities (Lockwood *et al.* 2013). What this suggests is that deception detection may be more difficult when the interlocutor possesses individual characteristics that bring a proclivity toward deception. In sum, while deception detection is not easy, it is easier in a face-to-face context than it is in other interaction

modalities. The medium is, literally, the message in the case of secrecy diplomacy.

Bringing these diverse perspectives together, the intuition that secrets *are* accessible and readable, despite existing as mental states in the minds of individuals, has support both in social theory and social neuroscience/psychology. And, as I discuss below, since both sides of a social interaction possess this ability, secrecy diplomacy provides a unique mechanism of signalling: individuals can read the secret signals of others while simultaneously paying a cost to do so in the form of providing their interlocutor with the very same opportunity.

Propositions regarding secrecy diplomacy as costly signal

Summing up the findings from evidence drawn from social psychology and neuroscience suggests that face-to-face interaction provides a mechanism for individuals to read and be read. Importantly, however, doing so is difficult and prone to error unless one is trained in the activity or possesses innate mental state reading capabilities. As such leaders likely vary on their abilities in reading the secrets of others. Second, leaders recognise this value in face-to-face interactions and therefore may seek out interpersonal interactions as a way of assessing the veracity of their counterpart or picking up on clues regarding information that their counterpart wishes to conceal. Finally, because leaders recognise this capability in themselves, they are likely aware that others possess it as well, though likely not to the same degree. As such they are willing to pay a cost of pursuing secrecy diplomacy in that they are potentially giving up concealed information because they believe that the benefits of that interaction outweigh that cost. Put another way, in conducting a cost–benefit analysis of secret diplomacy leaders recognise there is a cost to be paid, but they are willing to pay it. Fundamentally this suggests that secrecy diplomacy is a costly signal because leaders are willing to theoretically have their cards be put onto the table through face-to-face interaction.

If these propositions are accurate then empirically we should expect to find evidence of a number of different processes occurring in secrecy diplomacy. First, if diplomacy is employed in order to assess secrets, then we should expect leaders justifying the decision to engage in secrecy diplomacy

on the grounds of using the interaction to assess the concealed information of their counterpart. Importantly, however, we should also expect that leaders will be cautious in expanding this justification broadly even among their own government, since leaders may believe that secrecy-detection will not be viewed as a credible reason to pursue diplomacy. Second, once in the interaction we should expect evidence that leaders are using the interaction itself to parse clues regarding the secrets that their counterparts hold. Third, since leaders are presumably aware that others possess an ability to detect concealed information as well, we should expect evidence that leaders are careful and deliberate in their meetings not to reveal too much through non-verbal communication. Finally, we should expect leaders to use the information gleaned through the face-to-face interaction, the secrets obtained (if any), in justifying the next steps in political action.

Ultimately, since face-to-face interactions provide a mechanism for accessing the secrets of others there is a cost to be paid in engaging face-to-face. Leaders take on considerable risk when they engage in interpersonal diplomacy, risk that has been underappreciated and under-theorised in extant IR theory. This perspective suggests that there is a “dark side of empathy” (cf. Head 2012; Gonzalez-Liencre *et al.* 2013 on two different aspects of the dark side), where there is a cost to be paid in order to engage in it. The extent of the cost depends both on the amount of risk involved, which will be subject-matter dependent, and the relative levels of risk aversion/acceptance of the individuals involved. The upshot here is that which face-to-face diplomacy can be a way to reach mutual understanding, develop trust, and so forth, it is also potentially mutually risky, and therefore costly.

Conclusion

Secrecy, particularly at the individual level of analysis, is likely a ubiquitous practice in international politics, just as it is in everyday social life. Demonstrating just how ubiquitous is difficult because of secrecy’s generally unobservable nature, which makes studying it difficult and arguably has resulted in its lack of systematic theorisation, an important gap in our understanding of diplomacy that this volume seeks to address. I contribute to this discussion by investigating a particular area of world politics where

we *can* observe secrets and reading of secrets: interpersonal diplomacy. The argument in this chapter suggests that leaders and diplomats have good reasons to intuit that engaging in personal diplomacy is a route to being able to uncover secrets. Recent psychological and neuroscience evidence suggests that, at least theoretically, secret-reading is indeed possible in face-to-face interactions, though it is quite a difficult task and mediated by a number of important factors, such as emotional intelligence. Importantly, however, face-to-face diplomacy occurs in dyads. What one gains in the ability to read the secrets of an interlocutor, one also gives up in the ability for one's secrets to be read. There is therefore a cost to engaging in this type of diplomacy, what I term secrecy diplomacy, suggesting that the practice itself may constitute a form of costly signalling. This places this particular form of secret diplomacy squarely within the rationalist paradigm, while borrowing insights from psychological and neuroscientific perspectives.

While out of the scope of this chapter, additional empirical work is required to more fully understand how secrecy operates and the extent to which it is a common practice. In particular, further research in this area should investigate the conditions under which leaders actually believe that what they are engaging in constitutes a costly signal. After all, if the aim of secrecy diplomacy is sending a signal that the diplomat is willing to be read, then we would expect to find evidence of diplomats engaging in this type of calculation before engaging in diplomacy in the first place. Archival evidence and memoirs will be helpful in this analysis. Additionally, since individuals may exaggerate their own capacities to read others, there may be a bias in the way that diplomats and leaders consider the costs of secrecy diplomacy. Put simply, if they discount the ability of others to read them, or inflate their own capacities of deception, then they may be biased in their decision-making to believe that the costs of secrecy diplomacy are not as high as others may believe. Cost, in other words, is likely subjective when it comes to reading the secrets of others.

Notes

- ¹ This chapter benefited immensely from feedback received at the 2014 European Workshop in International Studies held in Izmir, Turkey. In particular, thanks to Corneliu Bjola, Austin Carson, Jeremie Cornut, Stuart Murray, and Krzysztof Pelc for detailed and helpful comments.

- 2 See Woodrow Wilson's Fourteen Points speech, online, available at: http://avalon.law.yale.edu/20th_century/wilson14.asp.
- 3 There are many different conceptualisations of rational/strategic choice in international politics. By rationality I refer broadly to purposeful goal-oriented behaviour that follows the form of desire+belief =action (Fearon and Wendt 2002), whereas rational/strategic choice is characterised as a methodological approach to the study of international politics that posits individual goal-seeking under constraints (Snidal 2002: 74).
- 4 There is also a second-order problem associated with this: studying secret diplomacy is difficult precisely because, by definition of the secrecy involved, observational evidence is hard to come by. That has at least three ramifications. First, cases of secret diplomacy may be unknown to scholars, suggesting that the universe of cases may be larger than scholars are aware of. Second, for cases that scholars are aware of, gaining evidence may be difficult due to the nature of the diplomacy. Relatedly, many of the standard sources that diplomacy scholars rely on for primary evidence, such as the personal memoir or contemporaneous diary, may lack details on the nature of the secret diplomatic interactions.
- 5 Of course whether they can do so accurately is another question, though there is good reason to believe that they might (see Holmes 2013). On the intuitions of policymakers and diplomats, rational and otherwise, see: Holmes forthcoming; Holmes and Traven forthcoming.
- 6 For good reviews of the costly signalling literature, see Kydd 2005; Booth and Wheeler 2008; Wheeler 2013; and Yarhi-Milo 2014.
- 7 For instance, secrecy diplomacy, where secret-detection is conducted in private, can be contrasted with the civilising force of the public sphere (cf. Mitzen 2005).
- 8 It could be argued that operational efficiency explains the need to keep certain plans and procedures cloaked from government officials, even those in one's own office or party. This is undoubtedly the case, though as I develop below, part of what makes secrecy diplomacy operationally efficient is that leaders do not need to explain, and convince others, of secrecy diplomacy's effectiveness.
- 9 "The Knives are Out: Panetta Eviscerates Obama's 'Red Line' Blunder on Syria". 2014. *Washington Times*. 7 October. Online, available at: www.washingtontimes.com/news/2014/oct/7/panetta-decries-obama-red-line-blunder-syria/ (accessed 25 August 2015).
- 10 See Rathbun (2014) for an excellent overview, and rejoinder, of the various reasons why scholars and policymakers may be sceptical of diplomacy's value.
- 11 Space does not allow for a full development of the appeasement versus deterrence debate in Britain or the Munich case in more detail. For excellent discussion and summaries of the debate, see: Shay 1977; Faber 2009; Ripsman *et al.* 2008; Reynolds 2009, also Goldstein 2012.
- 12 There are some notable exceptions to this, including Carson (2013). The vast majority of secret diplomacy treatments are historical in nature, offering overviews of the use of secret diplomacy without necessarily theorising its existence in relation to extant IR theory. See, for example, Gottlieb (1957) and Carter (1964).
- 13 My argument here regards the beliefs of leaders with respect to secret-reading, not their accuracy in reading them (often referred to as "empathic accuracy"). The aim here is to demonstrate that leaders may seek diplomacy as a way of reading secrets from others and to demonstrate that there are good theoretical reasons to believe that this intuition is not outside the realm of possibility. Put another way, leaders have good reason to believe that secrets can be read through interpersonal diplomacy. For more on this argument see Holmes 2013.
- 14 Elsewhere (Holmes 2011; Holmes and Panagopoulos 2014) I have argued that the incorporation of neuroscience into social science, and international relations in particular, should be undertaken uncritically or without scepticism. Indeed there are many valid reasons to be sceptical of such an

inclusion (see Bell 2006 on the general problems of incorporating biology into the study of world politics; Bell 2015 for a related and more specific argument regarding neuroscience in particular; as well as Jeffrey 2014). Critically applying neuroscience to IR has several upsides, including the ability to problematise otherwise untested assumptions, clarify concepts, and provide new creative ways to test extant theories. In the end, however, I do not mean to imply that the neuroscientific approach should be privileged; no particular approach should be. Rather, I seek to illustrate evidence from neuroscience that validates previous work in psychology on reading secrets from faces as well as to identify potential causal mechanisms underlying those perspectives.

- 15 The literature on emotions in international relations has thrived in recent years. For recent reviews, see Bleiker and Hutchison 2008; Hutchison and Bleiker 2014, and Åhäll and Gregory 2015. For specific links between emotions and neuroscience in an IR context, see Mercer 2014; Jeffery 2014; McDermott 2014; Kendall *et al.* 2015.
- 16 On honest signals, or the very subtle ways in which we convey information to others in interpersonal interactions, see Pentland 2008.

4 Back to the back room

Concert Diplomacy and crisis management from Vienna to Tehran

Karsten Jung

Introduction

Some 200 years after the Congress of Vienna restored peace to Europe after 12 years of war, another “conclave of Great Powers” (Mazowar 2012: xiv) assembled in the Austrian capital “to end a crisis that ha[d] lasted for more than 10 years” (Ashton and Zarif 2015). Though lacking the aristocratic grandeur and festive surroundings, the talks between the EU-3 + 3 and the Islamic Republic of Iran about the latter’s nuclear programme in many ways resembled the diplomatic style of the original Congress: Like the re-integration of France into the European states system, the rapprochement between Iran and the international community was negotiated by an elite group of great powers in a highly informal setting and largely shielded from public scrutiny. For three weeks, diplomats and even foreign ministers of the world’s most powerful nations remained in virtual lockdown at the luxurious Palais Coburg Hotel. They came and went through the back door to avoid the probing questions of the media. For security reasons, the curtains remained closed at all times. More than 500 journalists camped out in front of the hotel found it all but impossible to penetrate this wall of secrecy and, like the court reporters of another time, “resorted to writing all sorts of stories unrelated to the talks themselves” (Majd 2015).

The contemporary mode of crisis diplomacy, for which the Iranian negotiations are but one example, seems strangely reminiscent of the

secretive style and informal approach of the European Concert that kept the continent at peace for much of the nineteenth century: From Iran to North Korea, from the former Yugoslavia to the Middle East, from Libya to Syria and now Ukraine, it often takes “the form of a so-called ‘contact group’ that brings different countries together in an informal relationship to tackle a specific, and often very difficult, diplomatic or security problem” (Hunter 2008: 174). Confined to an elite group of diplomats from a self-selected cohort of great powers, the contemporary variant of Concert Diplomacy deliberately excludes not only representatives of smaller states and international institutions, but also the actors that have become the standard-bearers of an open and transparent mode of global governance: the media, think tanks, and non-governmental organisations. Its informal *modus operandi*, moreover, makes it difficult, if not impossible, to follow its proceedings and subject its decisions to appropriate scrutiny. It is, in short, anathema to the Wilsonian ideal that diplomacy should “proceed always frankly and in the public view” (Wilson 1918).

The first of Wilson’s famous 14 points enunciated at the end of the First World War, the norm of an inclusive and open diplomatic style has since evolved into a foundational principle of the prevailing liberal international order. If, then, we are now witnessing the (re-)emergence of a contemporary variant of the highly exclusive and secretive nineteenth-century Great Power club, which clearly violates established norms of inclusiveness and transparency, this warrants explanation: Why do states that have made significant investments in the establishment of a broad-based network of inclusive and open institutions seem to shun these forums in the management of many contemporary crises? Why do modern-day diplomats instead go back to the back room and revert to exclusive and secretive diplomatic practices that have long been out of fashion and criticised as “a recipe for abuse, ineffectiveness and even conflict” (Bjola 2013: 2)? What contribution, in other words, can the principles and practices of nineteenth-century Concert Diplomacy make to crisis management in the contemporary world?

In answering these questions, the chapter proceeds as follows: First, it recapitulates the policy and practice of the traditional Concert of Europe and highlights the environmental factors and design principles underpinning its longevity and popularity. These will then be juxtaposed with the

developments that have given rise to the open and inclusive multilateral order after the First World War and the more recent dynamics that have nurtured doubts about its continued viability. These, it will then be argued, have made a reversal to the more exclusive and informal style of Concert Diplomacy both desirable and possible. This can be illustrated by a case study of one of the most prominent instances of modern Concert Diplomacy, the negotiations over Iran's nuclear programme, which arguably would not have been possible, let alone successful, in the inclusive and public forums of the United Nations (UN) and International Atomic Energy Agency (IAEA).

The policy and practice of traditional Concert Diplomacy

Representatives of more than 200 states and principalities gathered some 200 years ago in Vienna to restore peace and order in Europe after the devastations of the Napoleonic Wars (see King 2008: 2). Having just fought and won a costly and exhaustive war full of vicissitudes, however, the four major powers at the core of the Sixth Coalition had no intention "to give an unwieldy congress of plenipotentiaries the authority to rewrite the map of Europe and articulate the terms of peace" (Ikenberry 2001: 114). From the beginning, they left no doubt that all important decisions would be taken by the "Big Four" in private, confidential discussions and only be submitted the full Congress for ratification (see Kissinger 1973: 151–2). Essentially, the Big Four considered the illustrious gathering in Vienna as "a way to put a legitimating stamp on the agreements and secret treaties that they worked out among themselves" (Ikenberry 2001: 114).

Having come to appreciate the advantages of working closely with their peers, the Big Four vowed to keep up their habit of private deliberations "to facilitate and to secure the execution of the present Treaty, and to consolidate the connexions which at the present moment so closely unite the Four Sovereigns for the Happiness of the World" (Quadruple Alliance Treaty 1815). To this effect, they

agreed to renew their meetings at fixed periods ... for the purpose of consulting upon their common interests, and for the consideration of the measures which at each of those periods shall be considered the most

salutary for the repose and prosperity of Nations, and for the maintenance of the Peace of Europe.

(Quadruple Alliance Treaty 1815, quoted in Jarrett 2014: 168)

Known today as the Concert of Europe, this effort to continue into peacetime the alliance that had brought Napoleon to his knees was – as Metternich's principal aide, Friedrich von Gentz, pointed out – “a phenomenon without precedent in the history of the world” (quoted in Mazowar 2012: 4): Before the Congress of Vienna, international conferences were held only at the termination of war, and their primary concern was the establishment of peace. With the advent of the Concert, however, “Europe saw the establishment of the practice of holding periodic conferences during peacetime for the consideration of matters of general interest to the governments of Europe” (Ikenberry 2001: 105).

If the principal purpose of the Concert thus was to serve as a guardian of the peace and custodian of the European order, it naturally relied on “a deeper notion of solidarity, resting on common values and the wish to restore a lasting European order” (Soutou 2000: 329). This, in turn, necessitated a limitation of the group's membership to those states with a stake in the preservation of the European order and those actors not easily susceptible to the nationalistic pressures that were on the rise across the continent. Having nurtured such a solidarity during the war, the plenipotentiaries of the Big Four thus quickly agreed on “the necessity of keeping the control of the decisions in their own hands” (Webster 1963: 79–80) and consequently “authorized themselves to act on the interest of a European public that transcends the membership of any single state” (Mitzen 2013: 89).

To legitimise this new prerogative, they introduced the novel “idea of the Great Powers, with rights as such, distinct from any derived from treaties” (Webster 1963: 80), and a shared responsibility for the maintenance of order and stability in Europe. Thus linking their special status and role not only to their superior capabilities, but also to “a common interest and ... [a] common duty to attend to” (Castlereagh, quoted in Richardson 1999: 51), they found an essentially functionalist answer to the challenge of “guaranteeing the rights and status of all states while discriminating between their different functions and responsibilities, necessarily conditioned by divergent

capacities and interests” (Schroeder 1994: 578). With the sole criterion for the accordance of Great Power status being its recognition by the peers, the Concert was, as Metternich suggested, essentially a self-appointed directorate, “brought into being of itself, without having received any formal authority, there being no source which could have given any” (quoted in Hamilton and Langhorne 2011: 88).

Absent any clear rules governing their conduct of the continent’s affairs, the great powers were “free to react to perceived threats to European stability in their own ways. They could call for a meeting, ignore, consent, and so on” (Mitzen 2013: 97). While it sometimes rendered the Concert a rather unwieldy institution, this procedural flexibility was certainly intentional. In the final months of the war, Castlereagh seems to have discovered that the only successful way for a highly diverse set of great powers with vastly diverging interests to keep together “was to be together, in close physical contact, and to rely more upon constant meeting than on the ordinary courses of diplomacy” (Langhorne 1981: 77). He thus conceived of the Concert primarily as an expedient means to extend that practice of informal policy-coordination outside the strictures of diplomatic protocol into peacetime. He may, Henry Kissinger dismissingly suggested, even have “considered confidential relationships not the expression, but the cause, of harmony” among the great powers (Kissinger 1973: 186). In this sense, “the act of discussion, the face-to-face exchange of opinions among fully empowered representatives, seemed to carry some weight over and above regular diplomacy” (Mitzen 2013: 103).

Thus essentially a flexible mechanism for secret policy-coordination among the great powers, the Concert “was fairly inchoate compared to the systematic organizations of many twentieth-century security institutions” (Richardson 1999: 52) and it “was often more notable for its discords than its harmonies” (Rich 1992: 32; see also Chapman 1998: 63). At its best, one author suggested, “it might be described as an informal institution; at its worst, as non-existent” (Holbraad 1971: 13). But if it was nothing more than the practice of “the great powers meeting together at times of international crisis to maintain peace” (Elrod 1976: 162), it was surprisingly successful at this. The era of relative calm it oversaw between the Congress of Vienna and the Crimean War of 1854, Henry Kissinger notes, was “the longest period of peace it had ever known” (Kissinger 1994: 79).

The rise and fall of modern multilateralism

When diplomats and statesmen once again gathered to make peace in Europe in 1918, one of their main objectives was to avoid what Woodrow Wilson called “the odour of Vienna” (quoted in King 2008: 316). In his mind, the supposedly undemocratic style, the secrecy and sheer exclusiveness of the Great Power politics embodied by the Concert had sowed distrust among the nations of Europe and ultimately led them into the abyss of the First World War (see King 2008: 317). When outlining the principles of a post-War order in his famous Fourteen Points, Wilson thus called for a new kind of diplomacy, based on “open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view” (Wilson 1918). Moreover, he urged to replace the exclusive and secret councils of the nineteenth-century Concert with a “general association of nations ... for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike” (Wilson 1918). Henceforth, international affairs were no longer to be managed by a back-room conclave of great powers, but in inclusive institutions open to public scrutiny.

Although his League of Nations ultimately failed to prevent another major war, Wilson’s ideas lived on and spawned a fundamental transformation of diplomacy that would shape the conduct of international affairs for a century to come. After the Second World War, the peacemakers once again invested much of their spoils of victory in the establishment and maintenance of collective security arrangements like the United Nations, regional security organisations like the Western European Union (WEU), and institutionalised alliances like the North Atlantic Treaty Organization (NATO). Based on inclusive membership rules, formalised procedures, and publicised deliberations, this new institutional architecture was consciously designed to democratise foreign policy. In reflecting on the San Francisco Conference, US president Harry S. Truman proclaimed:

Here is the spotlight of full publicity, in the tradition of liberty-loving people, opinions were expressed openly and freely.... This Charter was not the work of any single nation or group of nations, large or small....

That is the essence of democracy; that is the essence of keeping the peace in the future.

(Truman 1945)

In the decades since, we have grown used to international cooperation taking place, for the most part, in fairly broad-based, relatively inclusive, and highly institutionalised multilateral forums. In the 1990s, as the end of the Cold War removed the seemingly insurmountable ideological antagonism that had deadlocked many of these institutions for four decades, this dense network was expanded eastwards and eventually globalised. At the end of the twentieth century, the Correlates of War Project counted a total of 339 international governmental organisations, up from a mere 46 at the time of Wilson's Fourteen Points and just one in 1815 – the Central Commission for the Navigation of the Rhine established at the Congress of Vienna (Correlates of War 2010). Today's world, in the words of Daniel Drezner, is “thick with institutions” (Drezner 2008: 5).

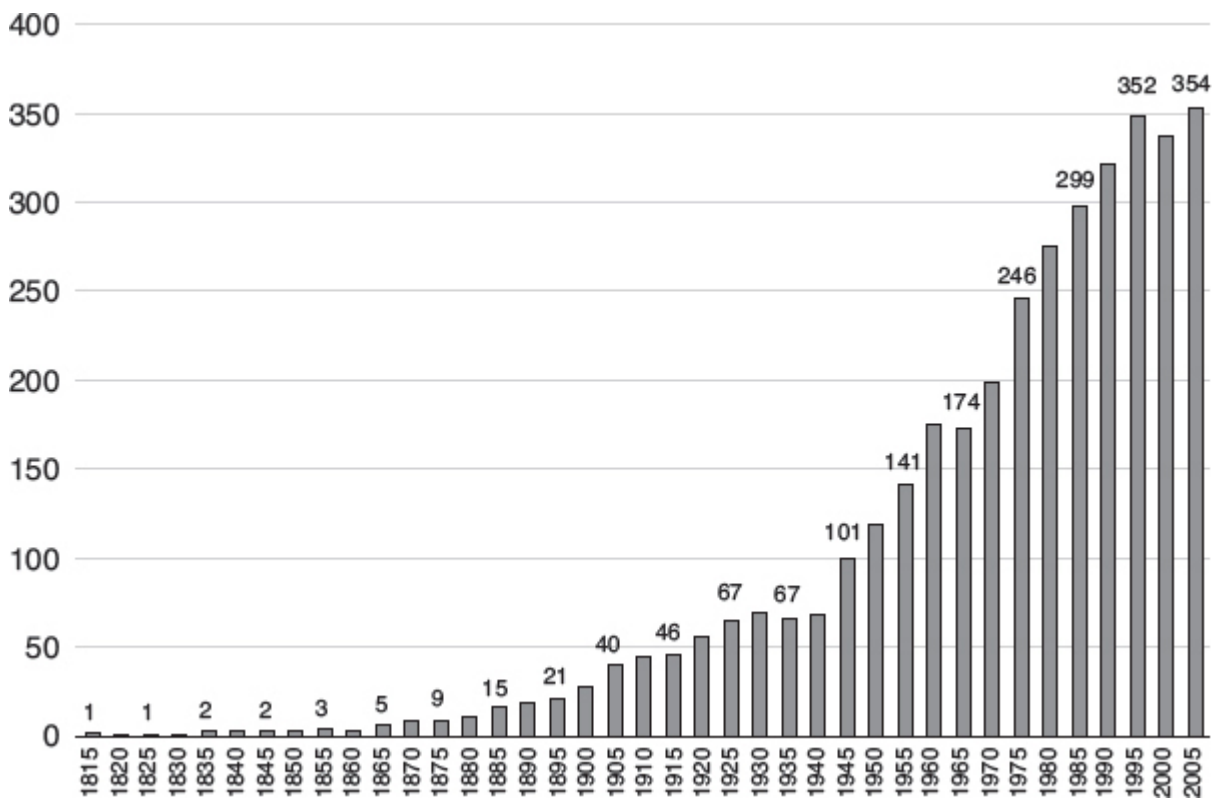


Figure 4.1 Number of international governmental institutions, 1815–2005 (Correlates of War 2010).

By nature and disposition, these have initiated a veritable revolution, dragging diplomacy from the proverbial smoke-filled back room into the spotlight of global civil society. Through their inclusive membership rules, egalitarian voting principles, and large international staff, they have – in most cases¹ – removed the elitism and secrecy traditionally surrounding the dealings of the great powers and made them accessible to lesser states as well as a growing network of international civil servants. With their frequent press releases, live broadcasts of meetings, and meticulous documentation of deliberations, they also made the process of diplomacy much more open to public scrutiny.

Mounting scrutiny, however, has also served to uncover the weaknesses and shortcomings of the liberal institutional order. From the frozen conflicts in the post-Soviet sphere and the humanitarian tragedies in Somalia, Rwanda, and the former Yugoslavia, to the threats posed by international terrorism (in Syria and Iraq), nuclear proliferation (in Iran and North Korea), and a violently resurgent nationalism (in Ukraine and the South China Seas), the established institutions seemed unable to cope with the challenges of the “new world disorder” (Carpenter 1991). In recent years, therefore, scholars, commentators, and practitioners declared “a crisis of global institutions” (Newman 2007) and “a liberal world order in crisis” (Sorensen 2011). Unable to muster an effective response to the most pressing problems of the global order, the international organizations increasingly found their legitimacy questioned even as they were meticulously following their rules of procedure. Indeed, the constraints imposed upon them by these rules gave rise to a situation in which “their procedural legitimacy has come into conflict with their performance legitimacy” (Newman 2007: 19). Particularly in crisis situations, where swift and decisive action is often of the essence, a number of states have therefore started to look out for ways “to circumvent established international organizations ... and ... form alternative and sometimes ad hoc coalitions for taking action” (Newman 2007: 183).

The promise of contemporary Concert Diplomacy

One hundred years after Wilson’s call for diplomacy to “proceed always frankly and in the public view” it once again seems to have become common

practice for diplomats to return to the back room and coordinate their policies in contact groups and similar ad hoc arrangements. With their focus on high-profile crisis management, exclusive membership, and informal procedures, they signal a return to a time when deals were struck secretly behind closed doors by a self-selected group of great powers. For Charles Kupchan, who now serves as President Obama's chief advisor on Europe at the National Security Council, such "pragmatic partnerships, flexible Concerts, and task-specific coalitions ... are fast becoming the most effective vehicles for diplomacy" (Kupchan and Trubowitz 2007: 42).

Numerous authors have indeed suggested that the post-Cold War environment provides fertile ground for a revival of Concert Diplomacy: In what is perhaps the most innovative look at the Concert from an IR perspective in recent years, Jennifer Mitzen contends that "the contemporary great power system seems to share some of the premises of the Concert" (2013: 213). Benjamin Miller equally suggests that "the post-Cold War era might be the first period since the 1815–54 era" in which the conditions for a Great Power Concert are met (2002: 124). Charles and Clifford Kupchan probably go furthest in suggesting that "the post-Cold War era provides an international setting that is even more conducive to the establishment of a Concert-based structure than the post-Napoleonic Wars era" (1991: 144).

Unsurprisingly, therefore, scholars have repeatedly contemplated a return, in one way or another, "to a traditional balance of power system under the aegis of a global concert of powers" (Chace and Rizopoulos 1999: 8). By-and-large, however, these efforts have been hardly systematic, highly speculative, and mostly normative in outlook. While most contributions to the debate seem to envision a modern-day Concert to emerge along the lines of the G-7/8 (see Kirton 2005; Lewis 1991; Odom 1995) or some variant thereof (see Jones, Pascual and Stedman 2009: xvii), other suggestions range from revamping "the Conference on Security and Cooperation in Europe (CSCE) ... to function as a concert-based collective security organization" (Kupchan and Kupchan 1991: 116) to a strategy "for making a multipolar Asia as benign and predictable as possible" (Stuart 1997: 229) or even a full-blown "Concert of Democracies [that] would be composed of diverse countries from around the globe – small and large, rich and poor, north and south, strong and weak – in ways similar to any other large international organization" (Daalder and Lindsay 2007). For the most part, however, one is

left with the impression that the Concert is merely invoked as a convenient catch-phrase to lend credence to policy-proposals that are mostly based on wishful thinking and bear only scant resemblance with the nineteenth-century original.

This conceptual confusion suggests “a clear need for a definition of modern Concert Diplomacy as the foundation for a fresh theoretical elaboration, broad empirical application, and careful assessment of its role in international politics” (Schwegmann 2001: 96). Thus far, only Christoph Schwegmann has substantiated the claim that “one can identify some core general principles, norms, and rules that both constituted the basis for the classic concerts and now serve the specific functions of modern concerts” (2001: 97) with a systematic – but brief – study of the Contact Group on the former Yugoslavia (2001: 97).² In his view,

[a] modern concert is an institution with few, mainly implicit, principles, norms, rules, and procedures and is formed by great powers in the event of international crisis with the aim of re-establishing security and stability by policy co-ordination among the concert powers.

(Schwegmann 2001: 98)

Drawing heavily on Elrod’s classic definition of the European Concert as a loose association of “the great powers meeting together at times of international crisis to maintain peace and to develop European solutions to European problems” (Elrod 1976: 162), Schwegmann’s conceptualisation clearly indicates some important similarities between the historical precedent and its contemporary reincarnation: a focus on crisis management, an exclusive Great Power membership, and a practice of informal policy-coordination.

Working through such formats, the key actors in today’s international system seem prepared to shun the prevailing standards of accountability and legitimacy enshrined in the liberal institutional order in favour of a more casual form of diplomacy that is not subjected to the constraints of an inclusive membership, strict rules of procedures, and transparency standards. While these subject the diplomatic process to enhanced scrutiny and thus serve to enhance its process legitimacy, they also make it susceptible to a multitude of pressures exerted by smaller states, special

interests, and public opinion, which might reduce the willingness of key players to cooperate and compromise: Stuck between systemic pressures for collaboration in crisis management and the constraints that the particularistic demands of various stakeholders impose on their freedom of action, they will be more easily convinced to cooperate, and their exchanges will be “fuller, franker, and less deceptive” (Jervis 1986: 73) if they confront “a situation which puts less constraint on their room for manoeuvre” (Haftendorn 1999: 187). Arguably, this can best be achieved by limiting the number of participating states to those that are critical for the attainment of an objective and by shielding their deliberations from outside influence; i.e. through exclusiveness and secrecy.

Traditional Concert Diplomacy institutionalised this logic quite simply by combining “the minimum number of independent actors (only great powers), to mobilize the maximum amount of collective capability (all great powers)” (Kirton 1989). As the fundamental transformation of the international system that went along with the demise of bipolarity has led to a global fragmentation of interests and power across the globe, however, it has become considerably more difficult to identify the appropriate candidates for membership in a potential Concert: What is emerging today is “a world dominated not by one or two or even several states but rather by dozens of actors possessing and exercising various kinds of power” (Haass 2008: 44) “in which no single country or bloc of countries has the political and economic leverage – or the will – to drive a truly international agenda” (Bremmer and Roubini 2011: 2). As “international relations becomes more ... segmented into a plurality of power structures” (Rasmussen 2001: 213), the very conception of “power is situational, or dependent on the issue, object, or goal for which it is employed” (Dougherty and Pfaltzgraff 2001: 75). Thus, while great powers remain, “by definition,... those actors with global (or at least multiregional) interests and capabilities” (Sieversson and Starr 1990: 60), they can no longer single-handedly manage all issues and crises everywhere.

What Moises Naim calls “the magic number [of states] to get real international action” (2009) will therefore vary greatly depending on the problem at hand. The group of states that need to be involved in crisis management will invariably become more diverse and not be the same on all issues, in all places, and at all times (Naim 2009; see also Keohane and Nye 2012: 35–46). Thus, if the (modified) structuralist argument holds true

that “the strong states (in an issue area) will make the rules” (Keohane and Nye 2012: 42), the growing fragmentation of international affairs into a multitude of issue areas and power structures suggests that “a regime that performs well in dealing with one problem may prove far less successful or even fail completely as a response to other problems” (Young 2002: 191). Under such conditions, the traditional model of multilateralism with its “impulse to universality that implied low barriers to participation” (Kahler 1992: 681) clearly “cannot remain the constitutive principle of multilateralism in the twenty-first century” (Newman 2007: 154–5).

If “one size does not fit all problems even in a single issue area” (Young 2002: 191), effective governance in crisis management should most reliably be expected from a structure of functionally and/or geographically specific “overlapping clubs ... created for the relevant subset of Great Powers interested in particular international trouble spots” (Rosecrance and Stein 2001: 230). Under such an arrangement, “rather than one multipurpose international institution, states have a multiplicity of institutional arrangements [at their disposal], most of them functionally and/or geographically specific” (Rosecrance and Stein 2001: 230). While it may lack the coordination and coherence of a more formalised institutional setup, such a decentralised approach “provide[s] both flexibility and focus, as it can limit the range of relevant participants and maintain a narrowly gauged set of concerns” (Rosecrance and Stein 2001: 230). Thus accepting “factual inequality, springing from real differences in capacity and interest with regard to a specific function, but also limited to that function” (Mitrany 1975: 120), the contemporary variant of Concert Diplomacy essentially constitutes a functional approach to crisis management that reflects the increasingly situational differentiation among states, their interests and capabilities. The Concert System as a whole thus becomes somewhat more diverse and accessible, but its individual incarnations remain governed by the same principles of exclusivity, informality, and intransparency that characterised the nineteenth-century Concert of Europe.

The case of Iran

In August 2002, accusations that the Iranian government was secretly building various nuclear facilities at Natanz and Arak gave rise to suspicions

that they might be linked to a military effort in pursuit of nuclear weapons (see Dupont 2009: 100). Committed to a tough stance on non-proliferation, the United States vigorously campaigned to find Tehran in non-compliance with its obligations under the Non-Proliferation Treaty (NPT) at the IAEA Board of Governors and drag it in front of the Security Council for appropriate punishment. At a time when the Bush administration was engaged in a hugely controversial “pre-emptive” war against Iraq over a very similar pretext, hawks in Washington already quipped that while “everyone wants to go to Baghdad real men want to go to Tehran” (*Newsweek* 2002).

In this situation, the foreign ministers of France, Germany, and the United Kingdom (the so-called E-3) were determined to avoid the mistakes they had made over Iraq and preserve a united front. Intent on preventing another dangerous and potentially destabilising confrontation at their geo-political doorstep, they launched “a secretive effort to convince Iran to sign the [additional] protocol – which allows for snap inspections of nuclear facilities by the IAEA” (BBC 2003a). Behind the scenes, they had their political directors and embassy staff in Tehran prepare an agreement under which Iran would “suspend its uranium-enrichment and reprocessing activities” in exchange for extensive diplomatic and economic concessions on the part of the EU (E-3 2003). Only when they felt sufficiently confident that a deal was possible did the foreign ministers go public with their initiative. In late October 2003, they travelled to Tehran and – after tense negotiations – indeed reached an agreement with the Iranians, the so-called Tehran Declaration. With that, the E-3 “had emerged as a diplomatic coalition that could act in a quasi-unified way regarding negotiations with Iran” (Wanis-St John 2012: 70).

The establishment of this Concert of European great powers triggered considerable criticism from other EU member states, who feared that the “Big Three” were forming a “directorate” within the Union. In an almost ironic twist, the initiative was also criticised by officials in the Bush administration as “European unilateralism” (Ford 2008). At a time, however, when the relevant multilateral institutions still were effectively paralysed by the fallout from President Bush’s controversial “pre-emptive” war in Iraq, the E-3 served as a useful stopgap measure: It contained the Iranian nuclear programme, removed the pretext for another US intervention in the Middle East, and preserved a semblance of unity within the West.

Ultimately, however, the E-3's initiative only bought some time. The Tehran Declaration and a subsequent agreement, negotiated in Paris a year later, quickly unravelled. The E-3, it turned out, commanded neither the necessary incentives (credible security assurances) nor the requisite disincentives (comprehensive sanctions) to resolve what ultimately was a dispute between Tehran and Washington. As long as Iran continued its enrichment activities and the United States persisted in its demand for Security Council action, "all further E3/EU-Iran negotiations would be futile" (Wanis-St John 2012: 77).

To overcome the deadlock and prevent what Anthony Wanis-St John describes as "classic spoiler behavior by a major external stakeholder" (Wanis-St John 2012: 78), the E-3 had to bring on board all major stakeholders with potential blocking power, i.e. the ability to derail the diplomatic effort. The group, therefore, had to take on "the more serious role of a coalition builder" (Harnisch 2007: 4) and "negotiate potential durable coalitions of parties ... that could impose or tighten sanctions (or other costs) on Iran, provide incentives to it, or both" (Sebenius and Singh 2012: 58). This required enlisting the active support of those actors capable of effectively punishing and/or rewarding Iran, i.e. those with a veto in the Security Council and Tehran's major trading partners. In addition to the E-3, these were China, Russia, the United States and the European Union.

This group found its "most powerful expression" (Patrikarakos 2012: 228) in the form of a Great Power Concert known as the EU-3 + 3 (for the three European states plus the remaining permanent members of the Security Council) or the P-5 + 1 (for the five permanent members of the Security Council plus Germany), respectively. Beyond a general desire to prevent the development of a nuclear programme with military applications in Iran, however, these six seemed to have little in common: While Washington favoured a strong and principled stance vis-à-vis Iran, Russia (a key supplier of military and nuclear technology to Iran) and China (an interested customer of Iran's petroleum industry) advocated a more lenient and pragmatic approach. The Europeans, oscillating between French resolve and German reluctance, found themselves somewhere in the middle.

Yet, the great powers knew that they could only hope to compel Iran to rethink its nuclear course if they appeared – and acted – united in key public forums like the UN and the IAEA. Allowing for the confidential

exchange of positions and private alignment of policies, the EU-3 + 3 greatly facilitated the development and preservation of such a united front around by playing two critical roles: It acted (1) as a coalition-builder within established international institutions, and (2) as a forum for managing negotiations with Iran.

Within formal international organisations, the EU-3 + 3 worked as a power centre around which other member states could coalesce. In the key organisations, Iran now confronted a seemingly united front of the world's most powerful nations, which had effectively tasked themselves with managing the nuclear crisis and implementing the dual track strategy on behalf of the international community. At the IAEA, the EU-3 + 3 quickly orchestrated the referral of the Iranian case to the Security Council once the United States had won over the other members by agreeing to support a diplomatic solution in return. As if to testify to the behind-the-scenes coordination, Iran complained that this decision had been "pre-impose[d]" by some members of the board (Larijani 2006). In June 2006, UN Security Council Resolution 1696 formally endorsed the EU-3 + 3's role as chief interlocutor between Iran and the broader international community. Over the coming years, it oversaw the passage of six resolutions concerning Iran, four of them imposing sanctions under Chapter VII of the UN Charter. At the same time, it remained flexible enough to allow for the adoption of more far-reaching unilateral sanctions by the EU and United States, who wanted to go further than what was acceptable to all six.

In its second role, as an independent forum for managing negotiations with Iran on behalf of the broader international community, the EU-3 + 3 also played a critical role. With their inclusive memberships and often unwieldy procedures, the established institutions often served as stages for public performances rather than environments for confidential negotiations. In multilateral forums like the United Nations, any interaction would inevitably be limited to posturing and grandstanding that was necessarily targeted more at a domestic audience than at the other side. Direct bilateral negotiations among the principal antagonists, on the other hand, were not yet feasible due to the mutual mistrust that had developed between Washington and Tehran over the past 30 years. Since the Islamic Revolution in 1979, all attempts at opening a direct bilateral channel between the "Great Satan" and charter member of the "Axis of Evil" had ultimately collapsed.

In this situation, the Concert setting provided a useful go-between for the two sides to start a gradual and careful rapprochement. Following Washington's accession to the group in 2006, Condoleezza Rice declared she would be ready to engage in direct negotiations with Iranian representatives in the context of the EU-3 + 3 negotiations "as soon as Iran fully and verifiably suspends its enrichment and reprocessing activities" (Rice 2006). Iran flatly rejected this condition, but as its partners in the EU-3 + 3 continued to pressure the Bush administration to be more open to diplomacy, Washington finally "surprised the world by sending Under Secretary of State William Burns to talks with the EU and Iran on 19 July 2008" (Sauer 2008: 282). Using a negotiating session between the EU-3 + 3 and Iran as cover, US officials engaged in "the first bi-lateral, face-to-face talks between the two countries for 30 years" (Patrikarakos 2012: 257).

While nothing much came out of it, an important precedent had been set on which Barack Obama could build after his inauguration the following year. Having consistently advocated a more pragmatic approach vis-à-vis Iran, Obama and his key advisors initially found the diplomatic cover and reassurance provided by the EU-3 + 3 to be unnecessary for – and, indeed, "an impediment" to – effective negotiations (Einhorn 2013). Robert Einhorn, one of the president's key Iran specialists, later stated that,

with Iran, the six P5 + 1 governments, and EU High Representative Ashton all needing to get their positions on the record, a lot of time is devoted to somewhat repetitive speech-making. If the P5 + 1/Iran talks are to be productive, ... [s]peeches need to be minimized and informal exchanges need to be the principal vehicle of engagement. Especially important will be direct US–Iranian interactions.

(Einhorn 2013)

To the incoming administration, the Concert appeared almost as paralysed as the institutions it had been meant to circumvent. To overcome the deadlock, the Obama team felt, another shortcut was needed. With the assistance of the Sultan of Oman, it thus embarked on a secret initiative "that a Henry Kissinger could appreciate" (Ignatius 2013): When the EU-3 + 3 and Iran wrapped up another largely inconclusive round of talks in February 2013, two members of the US delegation did not return to Washington, but

continued on to Muscat, where they secretly met with an Iranian team (see Klapper *et al.* 2013a; Rozen 2014). More clandestine meetings at undisclosed locations followed after the victory of Hassan Rouhani, a moderate, in Iran's presidential elections in June.

The secret talks, US officials insisted, were “designed to support and advance the P5 + 1 process; they have never been designed as a substitute” (Rozen 2013). Yet, as the United States and Iran began “to develop ideas that could be further negotiated with the P5 + 1” (Rozen 2013), the other members of the group were left in the dark. They only learned of the clandestine discussions after a very public telephone conversation between Obama and Rouhani on 27 September 2013 signalled an easing of tensions in the US–Iranian relationship (Klapper *et al.* 2013a). In the words of *Washington Post* commentator David Ignatius, “it was a classic magic trick: While the eye was distracted by the show of the P5 + 1 talks, the real work was done elsewhere” (Ignatius 2013).

Yet, while the secret meetings helped the principal antagonists to build trust and test ideas, they could not ultimately get the Iranians what they really wanted: early relief from the sanctions that hurt most – those targeting its petroleum and banking industries. Any understanding reached between the United States and Iran in this regard depended on the cooperation of the UN Security Council and the EU – “the only actor within the E3 + 3 that has punitive measures in place that can be lifted incrementally as an incentive for tangible and verifiable Iranian concessions” (Parsi 2012: 4).³ Ultimately, only EU High Representative Ashton “had a clear mandate and the trust from the six countries to negotiate the various bits and pieces” of a viable deal (Pawlak 2013). If the atmospheric improvements between Washington and Tehran were to be translated into a deal, therefore, the bilateral channel and the EU-3 + 3 process would have to be merged (see Rozen 2014).

This was done during the autumn of 2013, when US–Iranian talks and EU-3 + 3–Iran negotiations were being held in parallel in New York in September. As the preliminary understandings reached in the bilateral talks were “fed into the P5 + 1 channel” (Rozen 2013), the atmosphere in the larger group noticeably changed: “[T]he substance”, one British official noted, “is exactly the same as before, but the style could not be more distinct. Instead

of polemic and diatribes, there was focused dialogue” (quoted in International Crisis Group 2014a: 8). From a series of constructive talks in Geneva in October and November, the EU-3 + 3 and Iran thus finally emerged with an interim agreement that enjoyed the support of all parties. Dubbed the Joint Plan of Action (JPA), it called for the suspension of much of Iran’s nuclear programme in exchange for a corresponding suspension of some international sanctions (see EU-3 + 3 and Islamic Republic of Iran 2013).

While some commentators in Washington newspapers urged readers to “count the ... deal as a rare win for President Obama’s secretive, cerebral style of governing” (Ignatius 2013), it was Catherine Ashton who received most of the praise (see, for example, Traynor 2013; Schmitz and Schult 2013). Beyond the critical role she personally played in the final stages of the negotiations, such acclaim was also indicative of the broader role the EU-3 + 3 had played in bringing the Americans on board to the diplomatic process, facilitating their first direct contact with the Iranians, and keeping them engaged when the conflict seemed headed for escalation. The EU-3 + 3 had “proved itself as a coalition builder while maintaining credibility as a mediator between the Iran [*sic*] and the coalition” (Tocha 2009: 25).

In this role, the Concert quickly re-emerged as the principal forum for coordination among the great powers and negotiations with Iran. Since the clandestine meetings between the United States and Iranian delegations had become public in the context of the JPA negotiations, neither Washington nor Tehran saw a need for excessive secrecy anymore. Moreover, there was a sense in Europe that, while the bilateral talks had helped the process with Iran, they had also “harmed it by alienating some P-5+1 members” (European official quoted in International Crisis Group 2014a: 15). Reflecting this concern, the EU-3 + 3 now placed a heavy emphasis on the preservation of cohesion within the group and “US–Iran sessions occurred only after the [EU-3 + 3] parties had fixed their negotiating positions” (International Crisis Group 2014b: 4). As a consequence, the opening postures of the EU-3 + 3 and Iran were largely unfamiliar to and not well understood by the other side, often “maximalist bluster on certain issues with more realistic positions on others”, and thus largely obscured for the rivals what was negotiable and what not (International Crisis Group 2014b: 3).

Against this background, the talks on a comprehensive agreement foreseen in the JPA had to be repeatedly expanded and the final round of negotiations developed into “one of the most epic diplomatic marathons of modern times” (Borger 2015). From late June until mid-July 2015 the negotiators – and for the most part also the foreign ministers – remained in virtual lockdown at the luxurious Palais Coburg hotel in Vienna. Some diplomats spent well over a month in the Austrian capital, US Undersecretary of State Sherman was there for 27 days, and not in three decades had an American secretary of state stayed at a single place abroad for a longer period of time than John Kerry in Vienna (see Wright 2015). The setting has been described in one account as an “off-stage operation with the feel of a college dorm room during exam week” (Viser 2015).

In a situation where both sides had to make painful compromises and a hawkish opposition in both Iran and the United States was only waiting to dissect whatever deal would ultimately be presented, it was considered crucial that no details of an agreement would be prematurely leaked to its critics. The high-profile gathering was therefore almost hermetically sealed off from the outside world: While the atmosphere inside the Coburg was tense and the “standoffs, trade-offs, shouts and confrontations” hardly ever ceased (Sanger and Gordon 2015), more than 500 international journalists encamped outside of the luxurious hotel were left with little to report: “I’ve run out of words”, a French-language reporter told a colleague. “How many different ways can you say ‘inched towards a deal’?” (quoted in Grulovic *et al.* 2015).

On 14 July, the parties finally reached an agreement, the so-called Joint Comprehensive Plan of Action (JCPOA). Less than a week later, the UN Security Council unanimously passed Resolution 2231, in which it officially “*endorses* the JCPOA” and “*calls upon* all Member States, regional organizations and international organizations to take such actions as may be appropriate to support the implementation of the JCPOA” (UN Security Council 2015). In large part, this was directed at the IAEA, which the JCPOA “requested to monitor and verify the voluntary nuclear-related measures” to be taken by Iran (EU-3 + 3 and Islamic Republic of Iran 2015).

Although they had jealously guarded their privileges as Iran’s principal interlocutors in the nuclear negotiations, the EU-3 + 3 were well aware that they depended on the cooperation and support of established institutions

with specialised capabilities and broadly accepted legitimacy for the implementation of the deal. While that meant relinquishing control, it was also necessary to free much-needed resources in the foreign services of some of the world's major powers. Much of the final days in Vienna had therefore been spent on the wording of the security resolution casting the central provisions of the JCPOA into binding international law, mandating the IAEA to monitor its terms, and providing for the revocation of the previous resolutions and sanctions (see Sanger and Gordon 2015).

While the conclusion of the Vienna agreement and transfer of operational responsibilities for its implementation to the UN and IAEA may have been “the conclusion of our negotiations”, EU High Representative Mogherini and Iranian Foreign Minister Zarif were careful to emphasise that “this is not the end of our common work” (Mogherini and Zarif 2015): A scaled-down version of the format would persist in the form of a steering group tasked with monitoring the implementation of the JCPOA. Moreover, the parties would meet at the ministerial level at least every two years to review and assess progress along the road outlined in the JCPOA (see EU-3 + 3 and Islamic Republic of Iran 2015).

This desire not to allow their Concert to vanish reflects the members' appreciation for the group. The confidentiality and trust it nurtured had for the most part helped them manage their differences and preserve a united front. The format had also been instrumental in shielding cooperation on the Iranian issue from more contentious matters – such as the disputes between Russia and the West over Syria and Ukraine – in ways that more broad-based institutions with less restricted agendas could not have accomplished. Even as Moscow was expelled from the G-8, cooperation within the EU-3 + 3 continued (see Löwenstein 2015: 8).

Ultimately, therefore, it was a skilful combination of overt and covert, bilateral and minilateral diplomacy as well as multilateral action through the UN Security Council and the IAEA that made the Vienna deal possible. In keeping these elements together, the EU-3 + 3 played a critical coordinating and managerial role. It was instrumental in bringing the relevant parties together, keeping them engaged for more than a decade, coordinating their policies and strategies, and providing a forum for negotiations among the principal stakeholders.

It should, therefore, not be surprising that proposals for an application and expansion of the format to other contexts were aired almost immediately after the deal at Vienna had been concluded. In China, the Communist Party's official newspaper, the *People's Daily*, pronounced that the model "can be a positive reference for the handling of other regional hotspots, including the Korean peninsular nuclear issue" (*Guardian* 2015a). In Germany, where a continuation of the format would provide the added benefit of preserving the country's alleviated position among the P-5, Foreign Minister Steinmeier suggested that the EU-3 + 3 model might be usefully applied in the search for a diplomatic solution to the crises in Libya and Syria (see Steinmeier 2015). Likewise, Wolfgang Ischinger, a veteran of the Yugoslavia Contact Group himself, proposed "to turn the '5 plus 1 format' ... into a much broader platform with Russia, which could address all kinds of global and regional issues, such as Ukraine and Syria" (Ischinger 2015). After a dozen years of Iran diplomacy with countless ups and downs, the popularity of Concert Diplomacy was clearly unabated.

Conclusion

If its key proponents remained committed to the principles and practice of the Concert for 12 years and beyond, they were clearly less concerned about "the odour of Vienna" than Wilson had been 100 years before. In the analysis of John Kerry and his colleagues, the advantages that the exclusive and secretive approach of the EU-3 + 3 promised in terms of efficiency, or performance legitimacy, outweighed the costs in legitimacy, or process legitimacy, that it entailed. All too familiar with the problems and shortcomings of a liberal institutional order that had repeatedly failed to effectively tackle the most pressing challenges of the post-Cold War world, they may thus have been compelled to bypass the strictures imposed by open, formal, and unwieldy international organisations in favour of more restrictive, but arguably also more flexible and effective formats.

With its emphasis on exclusivity and secrecy, Concert Diplomacy appears well suited to orchestrate a viable response to contemporary threats and challenges. Serving as the proverbial back-room in which the major stakeholders can privately coordinate their policies, Concerts can play a significant role as coalition-builders. They do so, first, by organising

common strategies and compromises among the great powers that can be fed into the proceedings of larger institutions. Second, they occupy an important policy niche as confidential forums for the conduct of negotiations between the great powers and principal antagonists of a crisis. In this dual role, they enhance and complement – but do not supersede or replace – the existing liberal international order.

The multi-layered diplomatic process leading up to the Geneva and Vienna agreements illustrates the complex and crucial – yet limited – coordinating role that Contemporary Concerts can play as behind-the-scenes intermediaries between traditional multilateral diplomacy, bilateral engagement, and unilateral approaches. Capable of bringing together the key players on a specific issue in a flexible forum, they can help coordinate positions, overcome divisions, and thereby streamline processes in established institutions. By shielding the deliberations of its members from special interests of ultimately inconsequential actors, the glaring spotlight of public opinion, or the fallout from unrelated disputes, a Concert also makes the formation and development of trust-based relationships considerably easier than the open and inclusive forums of formal international organisations, which all too often invite posturing and catering to domestic audiences or attentive special interests. By removing the necessity to do so through the strict confidentiality, a Concert provides the necessary space to explore – and perhaps even expand – the room for compromise.

A Concert cannot, however, bridge fundamental policy differences among its members. If the preferences of two key stakeholders are diametrically opposed, a mere procedural innovation does not suffice to reconcile them. In such cases, however, Concerts still allow for the flexibility necessary for individual members to implement measures that go beyond the group consensus without undermining or endangering cooperation in principle. Here, the Concert functions as a clearing house that ensures the coherence of various initiatives and thus preserves a united front among the key individual and collective actors.

Appropriately understood and employed, an emerging system of Contemporary Concerts may thus have an important role to play as part of a broader, multi-level governance system of international crisis management. Capable of mustering an effective response to an emerging crisis even if established institutions are deadlocked, its role would be that of first

responder – staging a quick and effective response to prevent a further escalation. Once this is accomplished and the threat subsides, the Concert would retreat to the background and yield the field to more broad-based and legitimate international organisations, while possibly continuing to play a role in the oversight and coordination of their efforts from behind the scenes. If it does, in this sense, prove capable to overcome some of the more vexing challenges of crisis management in the post-Cold war era, Concert Diplomacy may indeed be in for a remarkable comeback 200 years after the Congress of Vienna.

Notes

- 1 The veto rights for five great powers in the UN Security Council constitutes an important and notable exception.
- 2 Schwegmann's subsequent (2003), larger work on the Contact Group conspicuously omits any reference to Concert Diplomacy.
- 3 The majority of US sanctions could only be lifted with the approval of the US Congress, which was highly sceptical in this regard.

Part II

Contexts of secret diplomacy

5 Diplomacy, secrecy and the law

Sanderijn Duquet and Jan Wouters

Introduction

Secrecy and confidentiality are an integral part of diplomatic relations (Berridge 2010). Stereotypically, a diplomatic agent distrusts diplomatic counterparts and treads carefully in order to avoid the dissemination of classified information. In order not to do so, the stereotype continues, the diplomat has a specific toolbox. Diplomatic bags and couriers, back-room diplomacy, and coded messages are just a number of ways to protect intelligence from acts of espionage or disclosure in the media. The picture painted is that of a Cold War understanding of diplomacy (Brodie 2011). It would appear that the way in which diplomats handle information has now changed. Technological developments that allow for the fast and uncomplicated distribution of data have been introduced to diplomatic correspondence and negotiations, increasing both efficiency and vulnerability. Moreover, states are increasingly working together in a manner that requires trust and loyalty, rather than distrust and the shielding of information. Intelligence is shared in institutionalised diplomatic fora (e.g. the European Union; EU or Union) and in less formalised coalitions (e.g. the Proliferation Security Initiative, PSI). Similarly, a greater degree of openness can be seen in the relationship between diplomats, on the one hand, and the press and the public, on the other. Nowadays, diplomatic missions establish dialogues, actively using both old and new media, to inform and engage with domestic and foreign publics (Barston 2013: 90). Nevertheless, it would be wrong to state that secrecy is no longer a topic in diplomacy and international law. To the contrary, diplomatic agents are well aware of the fact that they are sitting on information that may damage their sending state

or its partners. The majority of bilateral and multilateral negotiations continues to happen behind closed doors, in settings with predefined rules on confidentiality. Moreover, rules protecting secrecy that have been translated in international law, in particular during the Cold War period, remain fundamental to the way in which diplomacy is conducted. In addition to the aforementioned changes, internal and external pressures that pose a more fundamental threat to the culture of secrecy in diplomacy can be discerned (Cooper 2013: 46–7). Recent years have seen a rise in demands for openness and transparency in diplomacy, especially where human rights are at stake. Such demands have been echoed in judicial proceedings, in which the interests of diplomacy and the public have had to be balanced. This chapter explores the international legal framework that deals with secrecy in diplomatic relations. Throughout, we examine how this framework should be applied in light of the increasing demands for openness, respect for individual information rights, and, more generally, democratic accountability. While we consider these demands to be universal in nature, we recognise that the diplomatic services of a considerable number of states still operate in a culture of secretiveness. This chapter highlights practices in states and international organisations that have instigated steps to deal with public scrutiny of diplomacy. While we focus on secrecy *within* diplomatic relations in the second section, the third section investigates public access to information held by diplomatic services. The final section offers some concluding reflections.

Protecting secrecy within diplomatic relations

States continuously interact at the global level, be it through the permanent missions they have established in one another's capitals, in the framework of international organisations, or at ad hoc summits. The diplomatic game is complicated for it is based on assumptions, objectives, the exercise of power, high level politics, and, importantly, the pursuit of national strategic interests – often narrowly defined in terms of security and trade (Cooper 2013: 47). Given the number and political importance of diplomatic interactions, rules had to be established to enable game players to shield certain content from their diplomatic counterparts. International treaties and customary international law lay down rules that aim to keep instructions

from foreign ministries, preparatory documents and diplomatic archives secret. This section discusses the international law related to secrecy and confidentiality, first, in the context of permanent diplomatic missions and, second, in the international negotiation context.

Secrecy in bilateral diplomatic relations

The 1961 Vienna Convention on Diplomatic Relations (VCDR or the Convention) has successfully codified rules on many aspects of diplomatic life.¹ The protection of secret and confidential knowledge in diplomatic relations was an important theme for the International Law Commission's (ILC) preparatory work in anticipation of the Convention (1947–1960) and at the Vienna Conference in 1961. Unsurprisingly, considering the zeitgeist (the Cold War had reached a peak with the erection of the Berlin Wall in 1961), sentiments of distrust and mutual suspicion were brought to the negotiation table (Bruns 2014: 2). Yet, the text of the Convention does not address secrecy in direct terms. Rather, the VCDR is conceived as an instrument that enables diplomats to shield information from the receiving state, other states, and the public. The Convention offers a number of tools for such purposes, which are found in a relatively high number of provisions. Personal immunities and inviolabilities of diplomatic agents serve as a first example (VCDR Articles 26, 29 and 31). These diplomatic “advantages” are drawn up in such a way that they protect diplomatic agents from pressures that may exist to disclose secret intelligence. An express confirmation thereof can be found in the commentaries to the ILC's 1958 Draft Articles on Diplomatic Intercourse and Immunities.² In the words of the ILC (1958 Draft Articles: 101–2), the rationale to grant immunities and privileges to the diplomatic agent, as well as to administrative and technical staff of a mission, is that the latter

perform confidential tasks which, for the purposes of the mission's function, may be even more important than the tasks entrusted to some members of the diplomatic staff. An ambassador's secretary or an archivist may be as much the repository of secret or confidential knowledge as members of the diplomatic staff. Such persons equally

need protection of the same order against possible pressure by the receiving State.

Indeed, there is no doubt that the privileges, immunities and inviolability enjoyed by diplomats, members of the mission, and their family members, serve a functional need. As the preamble to the VCDR clarifies, the purpose of privileges and immunities is not to benefit individuals but to ensure the efficient performance of their respective functions. Those functions include the carrying out of sensitive political work for which guaranteed confidentiality is essential. The Convention's provisions on the immunity from jurisdiction (VCDR Art. 31 (1)) and immunity from execution (VCDR Art. 31 (3)), which protect the diplomatic agent against acts of the receiving states' authorities that would hinder him or her in the performance of his or her duties, embody this purpose in practice. Diplomatic agents also enjoy a freedom of movement (Art. 26) and personal inviolability (Art. 29), which entail a (negative) duty for the receiving states to abstain from exercising any sovereign right, especially enforcement rights. Moreover, the personal inviolability encompasses a special (positive) duty of protection for the receiving state. Concretely, the receiving state has to take all appropriate steps to protect the diplomat from unwanted interferences in the exercise of his or her functions, including threats to the intelligence he or she may have access to.

Since the diplomatic agent cannot be judged in the civil or criminal courts of the receiving state, nor be the object of any act of investigation or prosecution, he or she cannot be forced to give up secret knowledge in a court of law. Equally, the agent cannot be required to give evidence as a witness (VCDR Art. 31 (2)). The sending state can waive the aforementioned immunities if it deems that the diplomatic confidentiality is not at risk. Such a waiver has to be explicit and the testimony must be requested through the Ministry of Foreign Affairs of the receiving state transmitting the request to the relevant mission for the agent concerned (Salmon 1994: 320). Diplomats who testify as a witness after their sending state has waived its right to object the testimony of its diplomatic agent, still have tools at hand to protect secrecy if needed. Due to his or her immunity from criminal jurisdiction, a diplomat cannot be prosecuted for perjury without a new and specific waiver by the sending state. As a practical result, the value of a

diplomatic testimony may be uncertain. Accordingly, in criminal cases, this legal regime has been questioned in light of the right to a fair trial of others. Recently, a Chamber of the European Court of Human Rights (ECtHR), in *Meier v. Switzerland*, was confronted with this issue.³ The case concerned the 1999 interrogation by a prosecutor of the district of Zürich of several agents of the embassy of the Democratic People's Republic of Korea. Partly on the basis of those pre-trial testimonies, the applicant was convicted of fraud offences and sentenced to 27 months in prison. The diplomatic witnesses were not present, nor did they testify at the trial. The applicant filed an application at the ECtHR, arguing that the admittance of the testimonies of Korean embassy staff violated ECHR Article 6 (1). Moreover, so he argued, the statements should have been disregarded by the Swiss courts since, for the reasons outlined above, diplomats are under no threat of prosecution for false testimony. By a decision of 18 June 2013, the Chamber declared the case inadmissible for reasons unrelated to the issue of diplomatic testimonies, stating that it “*ne considère pas comme nécessaire de répondre à la question de la prise en compte des déclarations des agents diplomatiques*” (§54). In an *obiter dictum*, however, the Chamber noted that the ECHR does not, as such, prohibit the taking into account of statements of diplomats who are under no threat of criminal penalties for perjury. It added that such diplomatic testimonies would require increased attentiveness on the part of the prosecuting authorities and courts of law. Depending on the circumstances of the case, the nature of the statement, and its importance in view of the evidence in its entirety, it is up to the judge to either accept or reject such a testimony (§§58–60). In the case at hand, the Chamber noted that the diplomatic agents had testified voluntarily and were made aware of the obligation to tell the truth and the penalty for false testimony. Moreover, the Chamber called to mind that in case of suspicion of perjury the sending state has the sovereign right to waive the immunity of its officials, possibly at the request of the receiving state, if that is considered necessary to ensure a fair trial (§61).

One of the premises of the Vienna Convention is to facilitate and protect inter-state communication, including its secret character (Berridge 2010: 109–10; Denza 2008: 3–12). For that reason, the provisions on the inviolability of correspondence, archives and documents of diplomatic

missions are among those that are most relevant. First, the premises of the mission enjoy a special status under international law. The premises of the diplomatic mission are inviolable and agents of the receiving state may not enter them, except with the consent of the head of the mission (VCDR Art. 22 (1)). Similarly to the personal inviolability of the diplomatic agent, the receiving state is under a special duty to take all appropriate steps to protect the mission against any intrusion – including acts that would violate its secret intelligence (VCDR Art. 22 (2)). The protection offered ranges from preventive measures to the taking of criminal sanctions *post factum*. The inviolability is to be respected in emergencies and exceptional situations, even in cases of suspected criminal activity within the premises of the mission (Satow 2011a [1917]: 102). Crucial for the protection of physical documents as well as electronic apparatus, the prohibition on coercive measures by local authorities extends to the furnishings and other property found on the diplomatic premises, as well as the means of transport of the mission (VCDR Art. 22 (3); Richtsteig 2010: 47).

Second, the protection of diplomatic communication tools is crucial to ensuring that a mission can manage how and when it shares information. Denza describes the free and secret communication (VCDR Art. 27 (1)) between a mission and its sending state as “probably the most important of all privileges and immunities accorded under international diplomatic law” for it enables the mission to carry out its functions, notably the reporting and negotiation function (Denza 2008: 211; VCDR Art. 3 (1)). This relates to the idea that, if diplomatic communication is not kept secret, its very purpose vanishes. VCDR Article 27 (1) sets out a general obligation for the receiving state “to permit and protect free communication on the part of the mission for all official purposes”. The provision continues by stipulating that, in communicating with its sending state, “the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher”. This is the sole instance in which the Convention directly refers to secret operation modes of a mission, by explicitly allowing methods to transform a message into an obscured form so it cannot be understood by other actors. While the use of such codes is allowed, the consent of the receiving state is imperative for the installation and use of wireless transmitters (VCDR Art. 27 (1)). Due to the technological evolution since the introduction of the VCDR, communication has changed significantly. Yet, it

is accepted that “all appropriate means” includes modern means of communication such as (mobile) telecommunication, fax, and email (Choi 2006).

Third, VCDR Article 27 (2) stipulates that all official correspondence relating to the mission and its functions is inviolable. The protection of correspondence is not limited by its physical location. For example, mail cannot be intercepted even if it is not located in the diplomatic premises. Article 27 (2) includes both official correspondence from the mission and correspondence addressed to it. The inviolability of diplomatic archives and documents entails that they cannot be opened, searched or requisitioned without consent. Further, they cannot be used as evidence in legal proceedings (Salmon 1994: 210). These principles were recently confirmed in a judgment of the Court of Appeal of Brussels in the context of a criminal investigation that involved seizure (outside the premises of the mission) of correspondence exchanged with a diplomatic mission in Brussels.⁴ Since seizure of a mission’s official correspondence is void regardless of physical location, the mail had to be returned to the diplomatic mission. This stance in case law finds support in the VCDR, which ensures the inviolability of archives and documents “at all times and wherever they may be” (VCDR Art. 24). The term “archives” is not further described in the VCDR nor in the commentaries to the ILC’s 1958 Draft Articles on Diplomatic Intercourse and Immunities. However, we can take inspiration from the 1963 Convention on Consular Relations (VCCR). In the latter convention, the term “consular archives” is defined as including “all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safe keeping” (VCCR Art. 1 (1) (k)). It has been argued that this wide definition applies, by analogy, to diplomatic archives, without excluding other methods of information (Salmon 1994: 209; Denza 2008: 195). Moreover, modern forms of storage, such as computer files and USB keys also fall within the scope of the VCDR (Satow 2013: 113). This stand in literature was recently confirmed by the UN General Assembly in Resolution 69/121 on the consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives.⁵ The resolution features the first express confirmation by

the international community of a broad and modern understanding of diplomatic documents and archives, where it notes “that diplomatic and consular missions may maintain archives and documents in various forms, that official correspondence may take a variety of forms and that diplomatic and consular missions may use a variety of means of communication”. The extent to which protection can be guaranteed depends on the means of communication. Clearly, a letter sent by mail, although protected under the VCDR, is easier to open than a sealed diplomatic bag (VCDR Art. 27 (3)) carried by a courier (VCDR Art. 27 (5–6)).

From this brief overview it follows that the interception of, or any attempt to become acquainted with, the content of diplomatic communication or documents by the receiving state is prohibited under international law. However, state-led surveillance operations and acts of espionage are not merely phenomena from the past (Colson 2008: 192). Observers of diplomatic relations provide examples of receiving states that have installed listening devices or have bugged telephones of diplomatic missions on their territory (Richtsteig 2010: 61; Denza 2008: 218–24). Further still, with more states possessing the technical capability for interception, it has been suggested that such practices are on the rise (see also Barston 2013: 11).

The Convention does not expressly deal with the reverse situation, namely secret intelligence gathering by foreign diplomats in the receiving state. In its general provisions, however, the VCDR enumerates the legal duties of diplomats in the receiving state. These are of relevance because they contain important limits to the types of activities diplomats can engage in. According to VCDR Article 41 (1), diplomats are under the duty to respect the laws and regulations of the receiving state. As a result, acquiring information cannot take place through a violation of the law of the host state and may only be ascertained by “all lawful means” (VCDR Art. 3 (1) (d); Chatterjee 2013: 184; Satow 2013: 89). Such means are often defined in local laws, such as espionage legislation, by which diplomats must abide. Furthermore, Article 41 (3) stipulates that the premises of a mission must not be used in any manner incompatible with the diplomatic functions of the mission. An explicit reference to “espionage” can also be found in the International Court of Justice’s (ICJ) *Tehran Hostages* judgment,⁶ where it was considered to be an “abuse of [diplomatic] functions” (§84). Although

most states condemn the involvement of diplomats in espionage activities, it has proven difficult to draw a line between permitted intelligence gathering and acts prohibited under diplomatic law. First, the VCDR considers the ascertaining of conditions in the receiving state, and the reporting thereon, to be a function of a diplomatic mission (Art. 3 (1) (d)). Second, it is not uncommon for embassies to employ intelligence liaison officials (Malone 2014: 131). In theory, the activities of these specialists in the field of intelligence security are carried out in direct contact with the receiving states' Ministries of Defence and Justice. As such, the presence of "human intelligence" in the host state is legitimate. However, the VCDR provides for a number of correction mechanisms for cases in which the receiving state believes the presence of such officials is inappropriate. For example, the sending state may only assign a limited number of people to its diplomatic mission and the receiving state can refuse to accept officials of a particular category (VCDR Art. 11). Further, the host state has the right to refuse to accept individuals at its discretion (VCDR Art. 9). Moreover, VCDR Article 7 stipulates that, in the case of military attachés, the receiving state may require their names to be submitted for prior approval.

Despite these legal arguments, accusations that diplomats have violated rules on confidentiality in diplomatic relations are relatively common. In the spring of 2014, Ukraine expelled a military attaché of Russia's embassy from the country, after he was caught in the act of receiving classified information regarding Ukraine's cooperation with NATO. Another recent example is Edward Snowden's 2013 leak of classified NSA documents, which revealed that acts of espionage had been conducted from within the US embassy in Berlin. From a device placed on the rooftop of the embassy a special unit of the CIA and NSA had allegedly monitored telephone communication in Germany's government quarter. The repeated occurrence of this type of diplomatic incident raises questions regarding the quasi-sacred status of secrecy as a component of diplomatic relations. Instead, it seems that the observance of these aspects of diplomatic law is subject to a variety of factors, including political significance. It has also been argued that the power and/or technical advantages enjoyed by certain states in this domain can explain the exceptional disregard of secrecy rules (Denza 2008: 224). These issues relate to the compliance with the legal framework rather than the legal texts themselves, since the latter are relatively clear and

straightforward: the Convention both ensures the protection of diplomatic secrets from third parties and prohibits the uncovering of secrets of others (Colson 2008). Events such as the NSA scandal have been a catalyst for the international community to remind fellow receiving states of the obligations of diplomatic law. Instigated by the Brazilian representation in New York, the Sixth (Legal) Committee prepared a report that led to the UNGA Resolution 69/121 referred to above. In the resolution, the General Assembly states it is “concerned at the failure to respect the inviolability of diplomatic and consular missions and representatives” and, for that reason, recalls the principles of the secrecy of diplomatic archives and documents. As discussed, the innovative character of the resolution lies in the confirmation of the modern definition of diplomatic documents and archives, to include electronic means, rather than in this restatement of VCDR provisions.

Secrecy in the international negotiation context

The post-1945 broadening of traditionally bilateral diplomacy to multilateral diplomacy has had an impact on diplomatic secrecy. Diplomacy at international organisations and at high-level summits demands a tailored set of rules on confidentiality. Since the VCDR is not applicable as such, secrecy in multilateral settings is governed by special agreements or, where such agreements are lacking, by general international law.

First, a large proportion of diplomatic activities now take place in the institutionalised settings of international organisations (Mahbubani 2013: 248). Specific rules have been established to safeguard secrecy within these organisations. Commonly, these take the form of an establishment or headquarters agreement entered into by the organisation and the host state (for example, the 1947 UN Headquarters Agreement)⁷ or, alternatively, a treaty on the privileges and immunities of the organisation. Perhaps the most central legal instrument in this regard is the 1946 Convention on the Privileges and Immunities of the UN (CPIUN).⁸ The CPIUN has served as a model both for the privileges and immunities of the UN’s specialised agencies⁹ and for a number of other international organisations, including the North Atlantic Treaty Organization and the Council of Europe (Satow 2011b [1917]: 299). Reference can be made to those provisions that protect

the communication and documents of the organisation (here: the United Nations). The content of these rules is similar to those established in the bilateral diplomatic context. Communication, documents, and correspondence of the UN are accorded diplomatic treatment. For example, CPIUN Article III grants the UN, with regards to its official communications and in all of its member states, “treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission”. This most-favoured-nation clause means that the UN is able to safeguard the secrecy of its communications around the world. Moreover, the UN as an organisation (UN Charter Art. 105) and its officials (CPIUN Art. V) enjoy such privileges and immunities as are necessary for the fulfilment of their function, including the “secret” aspects. CPIUN Article II provides that the UN’s archives and premises are inviolable (for the New York Headquarters, see also 1947 UN Headquarters Agreement Art. III (9)), meaning that the archives and premises are immune from search or investigative measures. For example, local authorities may not enter UN headquarters without the approval of the Secretary-General. Similarly to VCDR Article 40 (3), the most straightforward reference to secrecy in the UN context is the latter’s right “to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags” (CPIUN Section 10). The CPIUN applies to other UN work stations, such as Geneva, Vienna and Nairobi. In addition, specific host state agreements, governing the relationship between the UN and Switzerland, Austria, and Kenya, echo CPIUN provisions on the inviolability of UN premises, documents and archives.¹⁰

The CPIUN also is the legal instrument of reference for diplomatic representatives accredited to the UN. Representatives of members are accorded a personal protection that is less far-reaching than the VCDR immunities which their diplomatic counterparts accredited to states enjoy (Satow 2011b [1917]: 294). They enjoy immunity from arrest and from seizure of personal baggage, as well as a general functional immunity from jurisdiction (CPIUN Art. IV (11) (a)). Moreover, the inviolability of their documents and communication is absolute (CPIUN Art. IV (11) (b)) and the missions are granted a right to use codes and to receive papers or

correspondence by courier or in sealed bags (CPIUN Art. IV (11) (c)). This provision allow for a basic protection of secrecy in their relations with the UN and other permanent representatives.

The EU provides a further example of secrecy in the multilateral context. Protocol No. 7 to the treaties on the privileges and immunities of the EU protects the Union's archives and premises (Arts. 1–2) and communication (Art. 5).¹¹ The rationale for the special, functional protection of EU civil servants (Art. 11) is to ensure that official activities are shielded from examination by member states under their domestic laws, so that these activities may be carried out in full freedom.¹² Moreover, where an official is called to give evidence before a national court on a subject related to his or her official capacity, prior permission must be obtained from the relevant EU institution. As confirmed in case law, no distinction is to be made in this respect between information covered, or not covered, by the duty that prohibits EU officials from disclosing confidential information obtained from third parties.¹³

Regarding the EU in Brussels, two specific diplomatic actors can be discerned: diplomatic missions of third states accredited to the Union and permanent representations of EU member states to the Union. Protocol No 7 accords both types of missions customary diplomatic protection, which, in practice, is equivalent to the VCDR privileges and immunities enjoyed by bilateral diplomatic missions accredited to Belgium. Article 16 of Protocol No. 7 deals with the protection of missions of third states (see Wouters and Duquet 2012), while Article 10 of the same Protocol accords the “representatives of member states taking part in the work of the institutions of the Union, their advisers and technical experts ... the customary privileges, immunities and facilities” in the performance of their duties and during their travel to and from the place of meeting.

While the systems set up by the UN and the EU may not be particularly innovative, they enable the international organisations to secure data from unwanted interference by the host and/or member states. In addition, through these legal provisions, environments were created, both in New York and in Brussels, in which the diplomatic representations of states and other international organisations to the UN and EU feel at ease to conduct diplomatic relations.

Second, the rhythm of international events is such that diplomacy does not take place solely in the context of international organisations, but also at ad hoc summits (Schermers and Blokker 2011: §1860). The latter sometimes resemble a traveling circus: they can be convened impromptu and at all corners of the world. This is a challenge to legal rules protecting secrecy. As such, there are a few general laws protecting documents distributed at conferences and communication between diplomats in the corridors. Rules on the protection of secrecy vary according to the type of summit. For conferences organised under the auspices of the UN, CPIUN Article 2 applies, according to which UN property and assets “wherever located and by whomsoever held” are immune from search, requisition, confiscation, expropriation and any other form of interference. In a similar vein, diplomats participating in conferences who are posted and accredited in the country where the negotiations take place can rely on many of the VCDR provisions protecting them and their correspondence. As explained above, the person of the diplomatic agent (VCDR Art. 29), his or her property, documents and correspondence (VCDR Art. 30 (2)), as well as the archives and documents of the mission (VCDR Art. 24), are inviolable wherever they may be. Moreover, when organising a conference, the UN enters into a specific agreement with the host country of a conference that makes the CPIUN applicable in respect to the conference.¹⁴ In such an agreement, the host government typically commits to accord diplomatic representatives attending the conference but not accredited to the receiving state, as well as UN officials, similar privileges and immunities as accorded to representatives to and officials of the UN headquarters.¹⁵ Commonly, the conference premises are inviolable for the duration of the negotiations.¹⁶ As these agreements share a similar content and have been used and recognised for many years in state practice, the question should be posed if this practice has generated customary international law in relation to the protection of secrecy at international diplomatic conferences. VCDR provisions related to immunities and inviolabilities have in any event largely become part of general international law (ICJ, *Tehran Hostages Case*, §62) and states recently have confirmed once more, in UNGA Resolution 69/121, the inviolability of diplomatic documents and archives “at any time and wherever they may be”.

Most diplomatic conferences are conducted according to a certain set of procedures that must be observed by participants. Yet, while rules of procedure often foresee the possibility of a vote by secret ballot, they do not grant additional immunities or inviolabilities to documents, correspondence and communication at the summit (Kaufmann 1988: 23). As such, rules of procedure do not commonly establish many rules on secrecy (Groom 2013: 269). At informal high-level meetings attended by heads of state and government, even the procedural rules themselves may be kept secret. In these informal settings, secrecy is regarded to be a precondition for eventual negotiation success (Lieberfeld 2008: 136). However, Barston distinguishes this type of diplomacy, which he refers to as “quiet” diplomacy, from truly secret or “covert” diplomacy (Barston 2013: 86). The former includes side-diplomacy (e.g. “groups of friends”) and the development of contacts and initiatives in the public domain although taking place “behind the scenes”. Despite the above, incidents relating to breaches of secrecy at international conferences and in informal settings are, perhaps surprisingly, rather scarce, or, at least, not often reported on.

Sidelining the general public

The special status afforded to diplomatic documents and communication affects outsiders to the diplomatic system. The VCDR, which was set up to govern relations between states, does not directly tackle questions such as whether diplomatic intelligence may be consulted by the public, whether it may be reported on by the media or whether it may be used as evidence in court cases. Since diplomatic law is silent on the matter, this section scrutinises other sources of national and international law protecting secrecy. First, cases of individuals seeking access to information held by public authorities will be discussed. Second, our attention will turn to the limits posed on the media coverage of diplomatic affairs.

Access to diplomatic information

Diplomats operate largely outside the scrutiny of the public, with little oversight by parliaments (Zidar 2004). The special status granted to diplomacy goes against the trend of “open government”, recognised in

human rights law and constitutional provisions across the world. Indeed, most general human rights treaties contain a right to seek, receive and impart information and ideas (see e.g. Universal Declaration of Human Rights Art. 19; International Covenant on Civil and Political Rights Art. 19; European Convention on Human Rights Art. 10; American Convention on Human Rights Art. 13). These provisions are increasingly interpreted by the relevant enforcement bodies as protecting a right of access to official documents (McDonagh 2013: 26).¹⁷ Further pioneering work on the issue has been carried out in the context of the UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters – the famous Aarhus Convention.¹⁸ The Council of Europe’s 2008 Convention on Access to Official Documents, however, is the first international treaty fully dedicated to the topic.¹⁹ The 2008 convention – which requires three more states to ratify it before it can enter into force²⁰ – explicitly recognises a general right of access to official documents held by public authorities (Art. 2). Limitations on the right of access to official documents are only permitted in order to protect certain interests. In Article 3 (1) (a–b), which reflects the relevant ECtHR case law, the 2008 convention provides that state parties may limit the right of access to official documents only when three conditions are met. The limitations have to be: *set down precisely in law*; *necessary* in a democratic society; and *proportionate* to the aim of protecting international relations, national security and public security. Diplomatic cables serve as a classic example of documents that are potentially harmful to international relations as well as to national security interests.

The application of these three conditions may be observed in (case) law at the national level. First, Western states commonly recognise a right to access to information, yet, have incorporated a “diplomatic exception”, in one form or another, in domestic *laws*. Countries have referred to this principle as the doctrine of executive privilege (United States), the public interest immunity (United Kingdom, previously known as the crown privilege), or the principle of *secret diplomatique* (France). Most states formulated the diplomatic exception in fairly general and all-encompassing terms. The 1991 Dutch Government Information Act²¹ contains a general exception for all

documents on diplomatic relations of the Netherlands with other states and international organisations, the United States' Freedom of Information Act speaks of information on "foreign policy"²² and the 1978 French administrative transparency law refers to "*la politique extérieure de la France*"²³ as an exception to access to information rights. Likewise, international organisations have adopted rules on the access to documents by the public. Unlike states, global international organisations do not commonly recognise a general right to information. However, a trend can be discerned towards more openness. The World Trade Organization, the World Bank Group and the International Monetary Fund have cautiously adopted a number of disclosure policies (Roberts 2004). The EU provides an atypical example of an organisation that has made special efforts in this regard. EU law on the topic resembles state regulation: it has as a starting point a general recognition of the right to access, with a diplomatic exception laid down in law.²⁴ In its treaties, the EU commits to take decisions as openly as possible (TEU Art. 10 (3)) and to maintain an open, transparent and regular dialogue with representative associations and civil society (TEU Art. 11 (2)). Moreover, the right of EU citizens to access to documents of the Union's institutions, bodies, offices and agencies (TEU Art. 15) is included among the fundamental rights of the Charter of Fundamental Rights of the EU (Art. 42). The right of access also applies to documents relating to the common foreign and security policy (Recital 7, preamble to Regulation 1049/2001). However, similarly to states, EU institutions and the EEAS will refuse access to a document where disclosure would undermine the protection of the public interest as regards public security, defence and military matters, and international relations (Art. 4 (1) (a) Regulation 1049/2001). The Court of Justice of the European Union (CJEU) has ruled on these exceptions on a number of occasions. In *Sison v. Council*, the CJEU confirmed that "international cooperation concerning terrorism presupposes a confidence on the part of states in the confidential treatment accorded to information which they have passed on to the Council" (§80). In view of the nature of the document requested, in this case, the Council had rightly considered that disclosure could compromise the position of the EU in international cooperation concerning the fight against terrorism (§§102–3).²⁵ In

Jurašinović v. Council, the CJEU decided that access can be denied to a Union citizen on the basis of Article 4 (1) (a) Regulation 1049/2001, even if the documents in question have been made available to a third party, *in casu* the International Criminal Tribunal for the former Yugoslavia, established by the United Nations (§65).²⁶

Second, limits to the access to public documents have to be *necessary in a democratic society*. Non-disclosure is commonly defended on realist grounds (Roberts 2004: 411). The preservation of a culture of secrecy is considered necessary to enable diplomats to negotiate effectively at the international level (Barston 2013: 90). Moreover, confidentiality is deemed requisite to earn the trust of diplomatic partners (Colson 2008: 186). While this rationale is easily understandable, it impedes citizens from discovering how their governments fare in conducting diplomatic relations. A paradox can be identified: the disclosure of diplomatic knowledge is sacrificed for the goal of political effectiveness in foreign relations, but, as a result, it is virtually impossible for the general public and, one may add, members of parliament, to ascertain whether this goal is reached or even pursued. Parliamentary control and scrutiny are a vital part of the democratic accountability of governments and executive agents. However, on matters of diplomacy, the obligations for executives to justify their decisions and implementation to parliaments seem less demanding than for other policies. While, in general, democratic accountability is seen as a necessary means to control diplomatic services, in literature it is also argued that democratic control does not automatically exert a consistently positive effect on diplomacy. Lieberfeld (2008: 137), for example, points out that “secrecy reduces incentives for negotiators to grandstand and speak mainly for the benefit of domestic audiences”. Domestic systems deal with the issue in various ways. In the United States, oversight by Congress, comparatively speaking, is one of the strongest systems of parliamentary accountability in foreign policymaking (Bjola and Kornprobst 2013: 31). The House and Senate Committees on Foreign Affairs review and consider diplomatic nominations, legislation relating to foreign policy, policy decisions of the US president, and are responsible for over-viewing foreign policy agencies of the US government, including the Department of State. Yet, even here national courts have

recognised the president's authority to classify information bearing on national security or foreign affairs (Pozen 2010: 322).

Parliamentary accountability is also an issue in the EU context (Wouters and Raube 2012). A recent case before the CJEU concerned a Member of the European Parliament (MEP) who was denied full access to a document containing an opinion of the Council's Legal Service (*Council v. In't Veld*).²⁷ The requested opinion discussed the opening of negotiations between the EU and the United States to make financial messaging data available to the US Treasury Department in the framework of the so-called SWIFT Agreement. The Council's refusal decision was taken on the ground of the exceptions laid down in the third indent of Article 4 (1) (a) relating to the protection of the public interest as regards international relations and the second indent of Article 4 (2) of Regulation 1049/2001, which provides protection for legal advice. The Council argued that disclosure of the document would reveal to the public information relating to certain provisions in the Agreement and, consequently, would negatively impact on the EU's negotiating position and would also damage the climate of confidence in the ongoing negotiations (§8). In 2012, the General Court had ruled that the fact that negotiations were ongoing was not conclusive in ascertaining whether there exists any overriding public interest justifying non-disclosure (§§73–6), which the CJEU confirmed in its appeal judgment (§110). Furthermore, the judgment backed the General Court in its assessment that legal advice on external relations is not automatically exempt from EU transparency requirements and that the Council must give specific reasons why the access would undermine the Council's interest to show that these are not purely hypothetical (§104). As a matter of principle, the fact that this judgment confirmed that it is possible to apply for access to legal opinions related to international negotiations constitutes a modest step forward for democratic accountability in the EU. In light of the relatively high number of international negotiations conducted by EU actors for which access to information for MEPs has not been self-evident, the judgment may potentially have a considerable impact. One can think of the cases of the ongoing transatlantic talks on the topic of genetically modified organisms, data protection, and in the context of the Transatlantic Trade and Investment Partnership (TTIP). Third, a government's decision to restrict access to

documents has to be *proportionate*. Generally, there are two main requirements for a state to deny access based on diplomatic grounds. First, in national laws such as the ones referred to above, it is clear that, in order to come to a decision regarding access, the authorities need to engage in a balancing exercise. Second, an authority denying access to a diplomatic document has to state its reasons for doing so. In general, this means that a public authority has to weigh the interests of the citizen requesting access, as well as those of the public at large, in being informed on government policies vis-à-vis the state protecting its interests in diplomacy. In Belgium, the proportionality test is laid down in law: all administrative authorities have to reject the request for inspection, clarification or copy of a government document, “if they are satisfied that the interests of the public do not outweigh the protection of the interests of Belgium in its international relations”.²⁸ While there are no strict rules regarding how the proportionality test should be performed, studying state practices highlights a number of elements that are generally relied upon. The following paragraphs comment on the use of criteria such as (a) the age of the document; (b) the sensitivity of the information contained; (c) the individual rights that are (possibly) at stake; and (d) the rule of diplomatic counterpart control.

A first criterion to determine whether information can be shared is the age of the requested document. The sensitivity of a document decreases significantly with time. Moreover, many countries have rules governing the preservation and the disclosure of diplomatic papers, including archives of embassies and consular offices, after a fixed number of years. Practices may vary between 30 years (e.g. in Japan, although this remains a selective declassification) to 40 (see, e.g. the release of the “Pentagon papers” by the US government in 2011) or 50 years (e.g. in the United Kingdom, for Foreign Office correspondence). Some countries always require prior authorisation, although age will likely be used as a criterion. In Belgium, depending on the document’s age, different procedures apply to deal with requests to consult documents. For documents between 30 and 50 years old, authorisation is granted by a “diplomatic committee” (comprised of diplomats and senior officials). By contrast, a request for access to a document that is over 50

years old is handled by the archives department of the Ministry of Foreign Affairs.

A second criterion, often (but not always) related to the age of the information requested, is the *diplomatic sensitivity* of a document. It goes without saying that truly sensitive data are rarely disclosed by diplomats. At the same time, not all diplomatic documents are protected by all-encompassing classifications such as “national security” or “secret”. Moreover, non-sensitive information is increasingly shared through a number of channels. One medium to inform the public is the publication of official announcements, such as an announcement in the official gazette or a government information document. For example, following the official welcoming ceremony organised for a new ambassador at the Royal Palace in Brussels, the presentation is mentioned in the Belgian Official Gazette. This serves both courtesy and information purposes. However, the content of the discussions between the king and the ambassador remain confidential (Dopagne *et al.* 2014: 31). Ministries of Foreign Affairs regularly set up information campaigns and organise press briefings. Numerous diplomatic missions even have an official Facebook page and Twitter and Instagram accounts, all of which contribute to public diplomacy efforts (Melissen 2005: 13). This growth of outreach activities shows a willingness of diplomats and diplomatic missions to embrace a certain openness and engage in a limited dialogue about what it is that diplomats do. In fact, such expressions are part of the representational function of diplomats established in VCDR Article 3 (1) and provide a good example of the dual nature of diplomacy as operating both in the spotlights and in the backstage room (Colson 2008: 184).

Third, in certain cases, a citizen may have a legitimate interest in gaining access to a particular document. This is the case when the document is of relevance to the exercise of his or her *individual rights*. A recent example can be found in Belgian practice. In September 2014, Rosneft – Russia’s main state-owned oil company – was hit with economic sanctions by the EU.²⁹ The company requested that the Belgian government provide Rosneft, under Belgian law, access to information that would disclose the facts relied upon in the EU’s sanctions decision. In other words, the company was interested to learn the rationale for the measures taken and the evidence upon which sanctions were based. Moreover, Rosneft demanded access to sensitive

information of a diplomatic nature. It requested access to (a) European communications with third countries, in particular the United States of America; (b) information on the voting of EU member states when adopting the restrictive measures; and (c) the EU member states' anticipated reaction "of the Government of the Russian Federation to the implementation of the measures, and in particular with regard to its foreign policy objectives in relation to the Ukraine". The Belgian government denied access on the basis of (a) Belgium's general international relations exception in its access to information law (i.e. its version of the "diplomatic exception") and (b) reasons of national security. The applicant was not satisfied with the government's answer and filed an administrative appeal with the Belgian commission for access to, and the re-use of, administrative documents.³⁰ In its report, the commission restated national and international case law to find that, in principle, administrative documents are public (CADA 2014: 4) and that a rejection has to be based on a ground provided by law and necessary to protect the interests of the state. The commission did not consider that the third criterion of proportionality had been met. Although it recognised that diplomatic relations constitute a possible legal basis for a denial of access, the commission found that the administrative decision-maker had failed to give sufficient reasons for its decision in the present case. The mere fact that the subject of the requested documents touched upon the diplomatic domain was not considered satisfactory by the commission to justify a ruling that denial of access was proportionate. A balancing exercise has to be carried out and motivated at all times. In deciding on the access to diplomatic documents, a government has to assess, on the one hand, the interest served by making the document public for the applicant and society at large and, on the other hand, the protection of Belgium's international relations. The original decision was struck down and the government was required to retake the decision.

The Rosneft case highlights a fourth criterion, here referred to as the *rule of diplomatic counterpart control*. Disclosure by one country may affect diplomatic counterparts. In settings such as the EU, where member states cooperate in fairly integrated ways, even in external relations, there is also a risk of forum shopping. Individuals can "shop" around in order to find the national laws that give the broadest access to information on common

diplomatic actions of member states. Even in bilateral relations, the decision of one state to make diplomatic archives public may bring discomfort to other nations. In 2005, when South Korea released diplomatic documents detailing behind-the-scenes negotiations between Japan and South Korea concerning reparations for Korean victims during Japan's colonial rule, a diplomatic incident ensued. To this day, the Japanese government has a policy of keeping its pertinent documents on the 1965 Treaty on Basic Relations between Japan and the Republic of Korea secret. In general, national governments have a duty of vigilance in their treatment of information received in confidence from diplomatic counterparts. Access to official documents is often denied when it is potentially harmful to other governments. In Canada, this limitation is expressly confirmed by law: its Access to Information Act foresees exemptions for information supplied by a government in confidence or that could reasonably be expected to result in financial loss, loss of a competitive position, or interference with contractual or other negotiations.³¹ Similarly, under EU legislation, documents originating from third countries or international organisations, classified as "(top) secret" or "*confidential*" are considered to be sensitive and can only be released with the consent of the originator (Art. 9 Regulation 1049/2001).

The picture painted above is a fragmented one. While all states referred to have adopted "diplomatic exceptions", there is no consensus as to what the "exclusive province" of diplomacy actually consists of. The core of diplomatic relations will remain secret, but greater efforts can be discerned, both in bilateral and multilateral settings, to inform the public. Some countries, such as the United States, even fragmentarily publish digests of their national practice including diplomatic notes and documents of the foreign office reflecting on the interpretation of treaties by officials (Christians 2012: 1410). Negotiation strategies have also been published by other actors, such as the EU. A recent example was the release, in October 2014, by the Council of the EU of its Directives for the negotiation on the TTIP, which had been kept secret until that time.³² Member state governments, acting in the Council, who had originally shown opposition to disclosing the negotiation mandate, ultimately decided to (partly) heed the calls for transparency. In EU circles, the TTIP is referred to as the most transparent trade negotiation ever held. This is exemplified by the regular

updates received by the public via a dedicated website and Twitter account. Moreover, democratic accountability has been strengthened, among others as a result of the *Council v. In't Veld* case discussed above. MEPs are provided with more information than is strictly required under the European Treaties, which is a positive development. Certainly, the diplomatic services' relationship with the general public has grown more complicated and more demanding, and such efforts are becoming a common practice to deal with increased demands.

Media reports on diplomacy: a delicate undertaking

We here look specifically into the freedom of the press to report on diplomacy and whether that includes a right to publish secret information. The human right to information, as discussed above, is closely related to the freedom of expression, and, in particular, the freedom of the press. Both traditional and non-traditional press have had experiences with reporting on matters of diplomacy and, ultimately, with limits imposed upon their rights to inform the public. We discuss, first, a European case of a journalist who was convicted for disclosing diplomatic correspondence in a newspaper article and, second, the case of the online mass dissemination of secret diplomatic documents by WikiLeaks.

The freedom of the press, like freedom of speech, is not absolute. In 2007, a case was brought before the ECtHR on the protection of diplomatic cables at the expense of the freedom of the press. The applicant, Mr Stoll, was a professional journalist who had been convicted for publishing a series of articles in which diplomatic correspondence was quoted. In his articles, the journalist had reported on a confidential briefing document prepared by the Swiss ambassador in Washington DC, which had been leaked to him by a Swiss government official. The cable discussed the strategies to be followed by Swiss authorities and other diplomats in negotiating compensation for Jewish Holocaust victims with Swiss banks. Mr Stoll's newspaper articles referred to the content of diplomatic cables, and commented on the ambassador's individual style and personality. The disclosure of secret diplomatic documents is a crime under Swiss law and the journalist had been sentenced by a Swiss court to pay a fine of 800 Swiss francs.

The ECtHR's case law on freedom of speech consistently takes the view that the media has an important role in informing the public on matters of public interest, including in circumstances where state actions and decisions are not automatically subject to democratic control or judicial review due to their confidential nature.³³ *Stoll v. Switzerland* provided the first opportunity for the ECtHR to test these principles in the context of diplomatic relations. In its argument, the Swiss government referred to the relevant VCDR provisions protecting the confidentiality of diplomatic correspondence (§79). The Swiss penal code applies formal criteria for identifying what constitutes "secret correspondence", including whether that correspondence is "diplomatic correspondence" as referred to in the VCDR. Moreover, the government had submitted that the disclosure of the ambassador's remarks, made against a highly sensitive political background, had jeopardised Switzerland's position and, in particular, had threatened to compromise the negotiations in which Switzerland was engaged at the time. In its reasoning, the ECtHR took account of the fact that the newspaper articles could cause serious damage to Switzerland's interests. Consequently, Mr Stoll's actions had placed the functioning of the diplomatic service at risk by undermining the necessary climate of discretion in diplomacy (§§130–6). The court weighed the potential harm caused against the right of the public to be informed on sensitive issues, such as the award of Holocaust compensation. It accepted the vital importance for the Swiss government of protecting diplomatic correspondence, but, at the same time, stressed that diplomatic reports cannot be protected "at any price" (§128). Furthermore, the court took the view that "the media's role as critic and watchdog also applies to the sphere of foreign policy.... Accordingly, preventing all public debate on matters relating to foreign affairs by invoking the need to protect diplomatic correspondence is unacceptable". However, as Mr Stoll had only been sentenced to pay a small fine and had not been prevented from expressing his views, the ECtHR decided that the conviction had not amounted to censorship and, consequently, that ECHR Article 10 had not been violated (§162).

Stoll v. Switzerland is a remarkable case for its recognition, in principle, of the value of public debate on the content of diplomatic affairs. When the ECtHR decided the case in 2007, little could it have anticipated the

revolution that would take place in diplomacy when the website WikiLeaks published its “cablegate” in 2010. In the United States, this release of classified documents and diplomatic cables is considered to be one of the largest breaches of security in the history of the country (Fenster 2011: 762). Many of WikiLeaks’ most prominent revelations came from the release of classified US documents on the military operations in Afghanistan and Iraq, and were harmful to the country’s diplomatic reputation and credibility. It is clear that WikiLeaks, by publishing large numbers of diplomatic cables online, has had a far greater impact than Mr Stoll’s newspaper article reporting on one cable. The practices of the secret-sharing website have shown the risks involved in the access to diplomatic documents through the Internet, even when such access is supposedly restricted and secured. Whether there has been a fundamental change to the culture of secrecy, however, can be debated. As noted in the literature, the absolute protection of free and safe diplomatic communication has never been guaranteed (Pancraccio 2007: 248; Plantey 2000: 293; Salmon 1994: 250).

While WikiLeaks has provided scholars and journalists alike with abundant material for thought and study, its legality is disputed, most prominently in the United States. Yet, it remains unclear what the exact legal consequences are for the mass disclosure of diplomatic cables. Commonly, a distinction is made between the leaking of diplomatic cables and use of leaked information for reporting purposes. In *Stoll v. Switzerland*, the way in which diplomatic cables were obtained was considered of relevance to the balancing of interests exercise carried out in the context of ECHR Article 10 (2). It was deemed significant that Mr Stoll had not been responsible for leaking the document. According to the European Court, the state bears the primary responsibility for ensuring confidentiality in diplomatic affairs (§142). Governments have to organise their diplomatic services and train staff in such a way that no confidential information will come to light (§143). In the United States, the taking of diplomatic information is an offense under the national Espionage Act (Vladeck 2007). A former US Army intelligence analyst, Bradley (now Chelsea) Manning, was convicted to 35 years in prison for copying and disseminating classified military field reports, State Department cables, and transferring them to WikiLeaks founder Julian Assange.³⁴ However, it is less obvious whether the releasing or publishing of

diplomatic information is, in itself, unlawful. At the time of writing, the United States has not criminally indicted Mr Assange, although a criminal investigation is being pursued. The newspapers around the globe that reported on the cables are unlikely to be subjected to criminal charges.

Concluding remarks

In this chapter we investigated international and national regulation that guards confidentiality in diplomatic relations, as well as the legal situation regarding making (part of) their contents public. Diplomacy is not often associated with openness, and a culture of secrecy has long been institutionalised in its legal framework. The Vienna Convention on Diplomatic Relations, various headquarters agreements and national freedom of information acts contain provisions protecting diplomats, the diplomatic mission and, importantly, diplomatic documents and correspondence from unwanted disclosure. The rationale used when drawing up these legal texts, sometimes over half a century ago, has been confirmed in recent national and international case law on the subject: secrecy is required in order to protect national interests and effectively conduct diplomatic negotiations. This is not to say that the law is always effective in protecting secrecy. Diplomatic actors themselves, for example in espionage cases, as well as outsiders, for example in the case of WikiLeaks, have revealed deficiencies in the legal system.

We also found out that, despite legal provisions posing a significant barrier to openness, public demands for transparency have begun to cause cracks in the system. First, states and international organisations have developed practices regarding disclosure and a more active informing of the public on non-sensitive information. Being a diplomat requires a certain flexibility, moving between shadow and light. Yet, both functions have a legal basis in the Vienna Convention and can be observed in state practice. Second, in legal procedures that have been instigated on this topic, the interests of other stakeholders are being weighed against those of the institution of diplomacy. In doing so, international and national enforcement bodies carry out balancing exercises in order to find more appropriate solutions and, importantly, have condemned all-encompassing, unmotivated, denials of access to diplomatic documents. To a certain extent, this has

eroded the traditional view that sees the greater engagement of the public and the media as obstacles to secrecy in diplomacy. Whether these changes are sufficient to redefine secrecy in diplomatic law remains highly uncertain. Diplomacy may still be one of the last information fortresses in open, modern and democratic societies.

Notes

- 1 Vienna Convention on Diplomatic Relations, signed in Vienna on 18 April 1961 and entered into force on 24 April 1964, *UNTS*, 500 (95): 310.
- 2 International Law Commission (1958) “Draft Articles on Diplomatic Relations with commentaries”, *YBILC*, vol. II.
- 3 ECtHR, Decision of 18 June 2013 (Chamber, Second Section), Case no 11590/08, *Meier v. Switzerland*.
- 4 Bru. C.A. (Ind. Div.), 22 December 2010, no. 4970, unreported; Cass., 5 April 2011 (*Pasicrisie* 2011: 982) (Belgium).
- 5 UNGA Resolution 69/121, adopted on 10 December 2014, on the consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives, A/RES/69/121.
- 6 ICJ, Case concerning United States Diplomatic and Consular Staff in Tehran of 24 May 1980 (*United States of America v. Iran*), ICJ Rep. 1980.
- 7 Agreement between the United Nations and the United States Regarding the Headquarters of the United Nations (1947) signed 26 June 1947, and approved by the General Assembly 31 October 1947, 11 *UNTS* 11.
- 8 Convention on the Privileges and Immunities of the United Nations, done at New York, 13 February 1946, entry into force, 17 September 1946, 1 *UNTS* 15.
- 9 Convention on the Privileges and Immunities of the Specialized Agencies, done at New York, 21 November 1947, entry into force, 2 December 1948, 33 *UNTS* 261.
- 10 Agreement on Privileges and Immunities of the United Nations concluded Between the Swiss Federal Council and the Secretary-General of the United Nations on 19 April 1946; Agreement between the Republic of Austria and the United Nations regarding the Seat of the United Nations in Vienna, signed on 29 November 1995; Agreement between the United Nations and the Government of Kenya regarding the Headquarters of the United Nations Environment Programme and the Government of Kenya, signed in Nairobi on 26 March 1975.
- 11 Protocol (No. 7) on the privileges and immunities of the European Union, *OJ* 2010, C 83/266, 30 March 2010.
- 12 ECJ, Judgment of 11 July 1968, C-5/68, *Claude Moïse Sayag and S.A. Zurich v. Jean-Pierre Leduc, Denise Thonnon, spouse of Leduc, and S.A. La Concorde*, ECLI 1968:42: 402.
- 13 ECJ, Judgment of 18 February 1992, C-54/90, *Weddel and Co. BV v. Commission of the European Communities*, ECR 1992 I-00871, §20.
- 14 See, for example, Article VI of the Agreement between the United Nations and the Government of Austria regarding the arrangements for the Vienna Conference on Consular Relations, signed at Vienna, on 29 January 1963; Agreement between the United Nations and the Government of Kazakhstan regarding the arrangements for the International Ministerial Conference of Landlocked

- and Transit Developing Countries and Donor Countries and International Financial and Development Institutions on Transit Transport Cooperation, signed at New York on 27 June 2003.
- 15 See Agreement on the 1963 Vienna Conference Art. VI (2), *supra* note 13.
 - 16 See Agreement on the 2003 International Ministerial Conference in Kazakhstan Art. XI (7), *supra* note 13.
 - 17 See in the European context: ECtHR 28 November 2013, Case. No. 39534/07, *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria*, §§37–48; ECtHR 24 June 2014, Case No. 27329/06, *Roşiianu v. Romania*, §§61–8.
 - 18 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, 25 June 1998 and entered into force, 30 October 2001, 2161 UNTS 447.
 - 19 Council of Europe Convention on Access to Official Documents, CETS No. 205, done at Tromsø, 18 June 2009.
 - 20 The Convention requires ten ratifications to enter into force. At the time of writing, 14 member states have signed it, seven of which (Bosnia and Herzegovina, Finland, Hungary, Lithuania, Montenegro, Norway and Sweden) have also ratified it.
 - 21 Article 10 (2.1) of the Law of 31 October 1991 on freedom of information [*wet houdende regelen betreffende de openbaarheid van bestuur*] (Netherlands).
 - 22 The Freedom of Information Act, 5 USC SECT. 552, as amended by public law No 104–231, 110 STAT. 3048 §552, b (1) (A) (United States of America).
 - 23 Article 6 (I) (2) (c), Law of 17 July 1978 on the relations between the state and the public [*Loi no 78–753 portant diverses mesures d’amélioration des relations entre l’administration et le public et diverses dispositions d’ordre administratif, social et fiscal*] (France).
 - 24 See: the EU rules on access to documents, in particular, Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. Pursuant to EEAS Decision Article 11 (1), this regulation also applies to the EEAS. See further Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information OJ 2011, L 141/17, online, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:141:0017:0065:EN:PDF>.
 - 25 Case C-266/05, *Sison v. Council*, Judgment of the Court of 1 February 2007, 2007 ECR I-1270.
 - 26 Case C-576/12, *Jurašinović v. Council*, Judgment of the Court of 28 November 2013 (not yet published).
 - 27 Case C-350/12, *Council v. In’t Veld*, Judgment of the Court of 3 July 2014, not yet published.
 - 28 Article 6 (1.3), Law of 11 April 1994 on the openness of government [*Loi relative à la publicité de l’administration/wet betreffende de openbaarheid van bestuur*] (Belgium) (own translation).
 - 29 Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, OJ 2014, L 271/3, Annex 3.
 - 30 *Commission d’accès aux et de réutilisation des documents administratifs* [referred to as CADA], 24 November 2014, Avis no 2014–93 sur l’accès aux documents qui révèlent la position de la Belgique sur des décisions de l’Union européenne (Belgium).
 - 31 Article 20 (1) of the Access to Information Act, RSC, 1985, c. A-1 (Canada).
 - 32 Council of the European Union, Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America, Brussels, 17 June 2013 (declassified 14 October 2014).
 - 33 See e.g. recently: ECHR 10 February 2009, Case no. 3514/02, *Eerikäinen et al. v. Finland*; ECHR 10 March 2009, Case nos. 3002/03 and 23676/03, *Times Newspapers Ltd v. United Kingdom*; ECHR 22

April 2010, Case no. 40984/07, *Fatullayev v. Azerbeidzjan*; ECHR 14 September 2010, Case no. 38224/03, *Sanoma Uitgevers v. Nederland*.

³⁴ Army Court Decision, *United States v. PFC Manning*, 21 August 2013, unpublished (United States).

6 Open secrecy

Anthony Glees

“Open secrecy” in the United Kingdom

“Open secrecy” is to be thought of as a discrete concept, describing what happens when a particular public policy (almost always concerned with national security) has been constructed with a significant intelligence input from a secret agency, whether we are speaking of information as a basis for action, or covert action itself (where intelligence officers and special forces may use intelligence to intervene, for example in Syria or Iraq at the time of writing). Although the public may never get to know the full extent of the secret input into policy, they will, usually informally, know that the work of secret agencies was involved in the policymaking, and must be satisfied *post hoc* that this has been lawfully executed and subject to oversight. It is to be found at the interface between secret intelligence activity on the one hand, and transparent and democratically accountable public policy on the other.

In time, aspects of the secret operations may be revealed but the names of intelligence officers and their agents will, and must, always remain secret (although, as we shall see, even this latter point is no longer as clear as it once was). Open secrecy therefore may be seen as an acceptable means of sharing with the public the fact that secret intelligence has been deployed by government in executing policy. Historically, this has been done by leaking to the media, official reviews and inquiries (especially when things go wrong) and the occasional government white paper. Sometimes politicians have themselves done the revealing, often to the chagrin of the intelligence agencies themselves, who, understandably perhaps, value secrecy more than anyone else if they are to do the jobs with which they have been tasked. Yet even informally, open secrecy may be regarded promoting transparency (a

vital part of democratic governance an appropriate means of squaring the circle between that which is secret (and about which the public cannot know) and that which is transparent (and they need to know in order to hold their elected representatives accountable) (Glees *et al.* 2006).

The process of open secrecy tells the public that secret activity has taken place and that government and secret agencies will be held to account for its deployment. The reports published by Britain's parliamentary oversight body, the Intelligence and Security Committee (ISC, discussed below) and by other regulatory bodies constitute a significant source of public knowledge of secret activity. It is an important qualification of the exploitation of secrecy in governance because of this. Open secrecy is different from clandestine activity for these reasons. Whilst it is true that since 2000 the United Kingdom has in force a freedom of information act to enable the public to access information held by public authorities, it is important to understand that there are 24 fields of information that are exempt from access legislation, including (of course) "national security", the "formulation of government policy, etc. [*sic*]", "defence" and "international relations" (UK Government 2000). Anyone thinking that the Act contributes to open secrecy would be deluded. Open secrecy applies to the very things that the Act excludes.

This chapter argues that despite many instances where open secrecy has revealed failures and shortcomings, secret activity is a most necessary and important tool in modern governance. However, without reform and better oversight, its current use may prove impossible to sustain, let alone improve. The public policies to be considered here will be those of the United Kingdom and its foreign policies (although they have an important domestic security aspect to them) and the intelligence agencies will be foreign intelligence agencies, and, in the British case, SIS, the Secret Intelligence Service, aka MI6. Whilst a similar analysis could be applied to other countries, particularly perhaps the United States, the conclusions could not be the same: the number, the management and the activities of US secret agencies are very different and their history has often been disastrous (Davies 2012).

The UK definition of intelligence (as used here)

In the United Kingdom, intelligence agencies do not merely operate “in secret” (whilst subject to oversight as is discussed below), but their product comes always from secret sources. This is not straightforward “information” (nor is it “intelligence” in the American sense, which describes any information from any source that is used by government). The British government provides a clear definition of intelligence to show, lest there be any doubt, how intelligence is to be applied in the context of British policy. It is “information acquired against the wishes and generally without the knowledge of the originators or possessors. Sources are kept secret from readers as are the techniques used to acquire the information. *Intelligence provides privileged insights not available openly* my emphasis” (UK Government 2015a, my emphasis). Open secrecy cannot be risk-free. The use of secret intelligence to develop a policy is inherently risky because the intelligence can be wrong (despite best efforts made to validate it). The products produced by secret intelligence agencies are qualitatively very different from those produced by diplomats working from open sources. Ironically, secret intelligence is viewed, in government, as one of the most important sources of information (because it is what enemies or potential enemies believe), but by an increasingly sceptical public secret information that is either untruthful, or if true, then unethically obtained. As a result, diplomats may be more trusted by the public than intelligence personnel and of course verification of what diplomats discover from open sources can often be obtained, almost by definition. Equally, however, diplomacy cannot uncover the secrets of other governments or of non-state actors. For this reason, the acquisition of secrets has to be the sole prerogative of secret intelligence agencies. It is self-evident that all governments will have secrets, especially if they harbour plans that may antagonise, provoke or disadvantage another nation or nations, and might even lead to armed conflict between them.

Secret intelligence will, if it is successful, be targeted on specific outcomes and may provide policymakers with precise and detailed information (because it is the information the target itself uses for policymaking and planning). It may reveal a course of action by a foreign government (or a domestic terrorist group) that might otherwise remain hidden and on which urgent action must be taken. Its use, when inadvertently revealed, will always lead to a serious breakdown in relations between states. This is why,

so frequently, diplomats and former diplomats can be heard informally contesting the value of secret intelligence. It risks the destruction of the very thing they seek to build: trust.

The fullest official description of the nature of secret intelligence comes, paradoxically perhaps, from the review carried out by Lord Butler into the intelligence failures that hallmarked Britain's attack on Iraq in 2003, largely justified on intelligence indicating that Saddam Hussein had stockpiles of "weapons of mass destruction" (WMD) (published in the government's 2002 dossier), which proved not to be the case (UK Government: Butler Review 2004).

"Intelligence" Lord Butler stated in his review

merely provides techniques for improving the basis of knowledge ... it can be a dangerous tool if its limitations are not recognized ... the most important limitation is its incompleteness. Much ingenuity and effort is spent on making secret information difficult to acquire ... it is often when first acquired sporadic and patchy and even after analysis may still be at best inferential ... the necessary protective security procedures with which intelligence is handled can reinforce a mystique of omniscience. Intelligence is not only like many other sources incomplete, it can be incomplete in undetectable ways.... A hidden limitation of intelligence is its inability to transform a mystery into a secret. In principle intelligence can be expected to uncover secrets.... The enemy's intentions may not be known but they are ... knowable. But mysteries are essentially unknowable. What a leader truly believes or which his reactions would be in certain circumstances cannot be known but can only be judged. Joint Intelligence Committee judgements have to cover both secrets and mysteries ... but [judgement] cannot impart certainty.

(UK Government: Butler Review 2004)

However, secret, intelligence-led activity has been and will always be a key, and probably a core, tool of governance. Lord Butler helpfully listed several examples of where secret intelligence had a positive and decisive influence on Britain's security: "the compliance with international law or international treaties, warning of untoward events, support of military and law enforcement operations and in long-term assistance to planning for

future national security operations” (UK Government: Butler Review 2004). Specific cases included the uncovering of the work of A. Q. Khan, who was “at the centre of an international proliferation network” in helping states to illegally enrich uranium, the decision by Libya to abandon its WMD programme in December 2003, the validation of the existence of Iran’s chemical weapons programme, of North Korea’s development of WMD, in the fight against Islamist terrorism and the tracking of “Usama Bin Laden” since November 1998 (UK Government: Butler Review 2004).

Whether the source of secret intelligence is “humint” (that is, intelligence derived from human sources, or agents) or “sigint” (that is derived from communications delivered by electronic means, or from the data they generate), it will always be seen as vital and, in respect of the “sigint” increasingly copious in quantity and, as long as it can be decrypted, of great use. The revolution in information technology does not, as often supposed, make the concept of secret intelligence redundant. Collecting and analysing it in an era of Islamist terrorism is probably even more important than it has been, and whereas the ease with which people can now communicate electronically (or wirelessly, since mobile phone and Wi-Fi Internet activity is wireless activity) means the intelligence agencies have exponentially more material to investigate than in the past, at any rate as long as individuals do communicate in this way, and as long as the software they use can be decrypted. However, if there were to continue to be a decline in the use of electronically transmitted communications (as we shall see this was one result of the Snowden revelations) or a growth in undecryptable software this would not cause intelligence activity to cease but simply make more traditional forms of accessing the secrets of others – spying on them and stealing government documents – more prevalent.

What open secrecy is not

Secret diplomacy: diplomats as spooks

Definitions are usually tedious. However when examining open secrecy and its role in good governance, it is important to note what is not “openly secret”. Secret diplomacy is not open secrecy.

There are a number of celebrated and notorious examples of secret diplomacy that show how it differs from the concept of open secrecy. On 29 July 1922, a secret clause was added to the Treaty of Rapallo of that year, signed between the Weimar Republic and the Soviet Union (which allowed the *Reichswehr* to train on Soviet territory). Similarly a secret protocol was added to the Molotov–Ribbentrop Pact of 24 August 1939 (which was an agreement to deliver Finland, Estonia and Latvia to the USSR, parts of Lithuania to the Reich and to partition Poland between the two dictatorships). The latter remained a formal secret (as far as the Russian people were concerned) until 1989. But perhaps one of the most infamous examples in the post-1945 world, whose existence was revealed fully only in 1991, came about in October 1956 when France, Israel and the United Kingdom signed the Sevres Protocol, which orchestrated an Israeli attack on Egyptian territory that was then used as a pretext for Anglo-French military intervention in Egypt with the aim of toppling General Nasser, its head of state (Tal *et al.* 2001; Shlaim 1997; Rodman 2014).

Secret diplomacy is not open secrecy. But nor is it open secrecy if accredited diplomats behave as if they were spooks. In an interesting article published in 2011 in the aftermath of the Assange revelations, Mark Page and J. E. Spence argued that “diplomacy must always be confidential if it is to be successful; secrecy in diplomacy is a necessity” (Page and Spence 2011). Although they (correctly) point out that little if any of Assange’s “WikiLeaks” are of much interest, they make two claims that are worth further analysis. They suggest that the documents show “US diplomats were encouraged to spy by their government” rather than just keep their country’s secrets, and that “one of diplomacy’s functions is intelligence/information gathering” (Page and Spence 2011). This observation leads them to the conclusion that the United States and probably other states “have developed a habit of secretiveness, undoubtedly abusing its right to decide what is secret and what the public have a right to know”. This seems wrong on both theoretical and practical grounds. If, as a rule, there is spying to be done, then those who undertake it are not diplomats (it seems that although the authors are American, they are using the British definition of “intelligence” here). This was a point made very forcibly by the US ambassador to the UN, Susan Rice: “Let me be very clear, our diplomats are just that, they’re diplomats” (Reuters blog 2010).

It is possible, of course, that some of those who spy are not real diplomats but using diplomatic cover to do so but this is not the same thing as claiming that diplomats spy. Indeed the “spying” in question was an apparent request for US diplomats to note the phone numbers of foreign diplomats and their frequent flyer miles. But making a note of phone numbers (for the NSA to use, perhaps) is not gaining secret intelligence. Second, there is not only no evidence that states have become more secretive (the reverse would seem the case), but it is absurd to suggest a democratic government acts abusively if it deems secrecy necessary. It is also worth noting that the WikiLeaks material (unlike the Snowden evidence) had initially, at any rate, little or nothing do with the work of secret agencies (Roberts 2011). The 250,000 documents released prior to 2013 were communications between the US State Department and its outposts throughout the world and were predicted to cause a “global diplomatic crisis” (i.e. not an intelligence one) (Roberts 2011).

The bulk of Assange’s early releases highlighted diplomatic and defence traffic, not secret intelligence (news.com.au 2013; *The Economist* 2015; *Guardian* 2015c; BBC 2015). Today it is harder to be sure about this. Releases in 2014 and 2015 appeared to include records of the phone numbers of German politicians, implying they were spied on, as was the president of France, by the US National Security Agency, the NSA (*Guardian* 2015d; *The Economist* 2015). If the numbers came from the NSA, then this was certainly intelligence material. If they came from the diplomats asked to supply them, it was not so, or hardly so. Indeed, material from the NSA was thought to have been Snowden’s preserve (BBC 2015). It is by no means impossible, indeed it is probable, that some collaboration between Assange and Snowden has taken place since 2013 which may have blurred the distinction between the two sets of materials.

Yet even where it is undertaken by intelligence agencies, policy cannot be said to conform to the idea of open secrecy if it is conducted clandestinely, and intended to remain so. In a seminal article written in 2007 that defined how, broadly speaking, diplomacy and covert action interface, John D. Stempel contrasted the development of modern diplomacy, an extension of an activity that had its roots in Venice in the fifteenth century, with an analysis of the tasks placed on intelligence (rather than diplomatic) communities (Sayle 1988; Stempel 2007; Herman 1998, 2007, 2009). As far as

the United States is concerned however, no formal clandestine service existed until 1940; the CIA was founded only in 1947. Stempel quotes Jeffrey Richelson's by now classic (if necessarily cumbersome) definition of covert action in the United States:

[This] includes any operation designed to influence foreign governments, persons, or events in support of the sponsoring government's foreign policy objectives, while keeping the sponsoring government's support of the operation secret. Whereas in clandestine collection the emphasis is on keeping the activity secret, in covert action it is keeping the sponsorship secret.

(Stempel 2007)

Stempel listed various forms of clandestine action (propaganda, economic operations, political action, including grants to political parties and "in certain instances *coups d'état* against foreign leaders". Both the United States and the Soviet Union, he suggests, engaged in the latter. More recently covert action has involved the penetration of terrorist cells. Given the broad front on which secret activity by the US government, at any rate, has proceeded, Stempel points out that it was hardly surprising that by the early 1970s the US Congress began to address the need for its oversight. At the same time, academic study of the subject tended to take a jaundiced view of secret activity, stressing negative outcomes ("blowback" damage to US foreign policy, a mismatch between the objectives of the activity and "American values") (Stempel 2007).

Is covert action of this kind, using openly avowed diplomats for secret purposes, "moral", Stempel asks.

Its undertaking is always justified as important or even vital for national security. Covert action has been separated from diplomacy and discouraged in international law because it is not considered an acceptable part of international relations.... Nevertheless, it persists.

Whilst pointing the distinct possibility that in the case of the United States, and president G. W. Bush's policy of bringing democracy to the Middle East, covert actions may have undercut this policy, Stempel seems to conclude

that when overt means will not work, and there is a “significant probability of success with minimal damage to innocent people” covert activity may be well justified.

Secret diplomacy: spooks as diplomats

There is a further way in which secret agencies can be involved in the making and delivery of foreign policy. It is to use secret service personnel, whose identities are not publicly avowed as working for MI6, in lieu of diplomats (once again, this is not open secrecy, merely a variant of clandestine activity that governments would not wish to reveal to the public for many years and where secret service personnel are deemed to be more likely than diplomats to keep silent over many years.

In an article written ten years ago, the British scholar Len Scott also considered the activities of intelligence personnel when they were ordered to stray into the diplomatic field (Scott 2004). He suggested that an examination of this field would “resonate with the perspective of Richard Aldrich that secret service activity includes ‘operations to influence the world’ by unseen means, the hidden hand” of which “clandestine diplomacy” is, he argues, an important field in its own right. As we shall see, Scott’s intriguing analysis inevitably struggles with a failure of hard evidence and an eagerness to see secret service officers in a relatively negative light. He is entirely right to point out that it is legitimate to ask “how we know about secret interventions” but seems perhaps a touch too ready to base his study on claims made by rogue intelligence officers. Scott suggests for example that the original concept of “special operations” morphed first into “special political action” and then became “disruptive action”, which will have included political assassinations (Scott 2004).

His proof of this relies on claims made by the discredited former MI5 officer, David Shayler, who claimed to know that SIS/MI6 had “supported groups seeking to overthrow or assassinate the Libyan leader Colonel Gaddafi in 1995–6”, which he says can be given “apparent corroboration” from a website (cryptome.org). In fact, the website showed simply that in their memo (if it is genuine) the would-be assassins hoped to receive SIS support, not that it was given. Similarly he seems to accept as truth testimony from Richard Tomlinson a former discredited SIS officer (who

made waves with his claim that SIS, acting under the orders of the Duke of Edinburgh, had murdered Princess Diana) (BBC 2009; webarchive 2009). Whilst the practice of neither denying nor confirming secret activity means that wild allegations can be made with relative ease, what Scott fails to point out is that lawfulness can be, and is, tested by the various regimes generated by the 1998 introduction into British law of the ECHR but that some allegations of wrongdoing (for example that Dr David Kelly was assassinated by the British intelligence community or an Iraqi exile group, the claims concerning Princess Diana's death, the bizarre death of an SIS officer in a black bag or the death of Alexander Litvinenko) can be examined in coroners' inquests or in public inquiries (Baker 2007).

Scott points out that our knowledge of covert action undertaken for governments by the secret agencies has to rely on often flaky sources: (we know about covert action in the same ways that we know about other intelligence activities, through authorised and unauthorised disclosure, memos, journalism, defectors, archives, whistle-blowers and judicial investigation. The veracity and integrity of these sources may differ" (Scott 2004). Admittedly (and perhaps unfortunately) Scott's article was written not only before either the Hutton Inquiry or the Butler Review, but also before the authorised histories of MI5 and MI6 were published a few years later. Sources do now exist that did not exist when he was writing his article.

Scott seems to accept at face value a number of accounts that claim inside knowledge but provide absolutely no convincing reason for believing that the knowledge is inside – or even if it is, is accurate. In the United Kingdom the only intelligence officers publicly avowed as such are the agency chiefs and one or two "notables" like the late Baroness Park of Monmouth, a long-serving MI6 officer. It follows we should be immediately wary of those claiming to be former officers with inside knowledge they are now anxious to share with commentators. Even if they are what they claim, their testimony may be untrue; some would argue that in this case it is bound to be untrue! Scott not only seems reluctant to challenge some of the sources but also quotes with apparent approval some curious views (such as the theory that covert action taken by Western intelligence agencies in the Cold War period was "specifically designed" to "provoke Soviet aggression" and that the Cold War may itself have been caused by the United States rather

than the USSR, views attributed to Richard Aldrich and Sara Jane Corkem) (Scott 2004).

The most important reason intelligence officials are instructed to undertake “clandestine diplomacy”, Scott sagely concludes, is in fact rather different. It is to “engage in secret and deniable discussions with adversaries”. Examples of this process include, he says,

the role of British intelligence services in the Northern Ireland peace process, the role of the Israeli ... services in Middle East diplomacy and peace-building, the CIA’s relations with the PLO and SIS relations with Hamas ... the value of clandestine diplomacy is it is more readily deniable and this is politically significant where the adversary is engaged in armed attack and/or terrorist activity.

(Scott 2004)

It is impossible to know if what appear to be examples of this kind of activity are genuine or not. The newspaper makes significant use of two people they describe as “former MI6 officers”, Richard Barrett (said to have been a “secret intelligence chief”) and, more importantly, Alastair Crooke. Barrett has argued that British ISIL fighters should be encouraged to return to the United Kingdom because they could then explain to fellow young British Muslims why ISIL is mistaken (*Daily Mail* 2014); he describes himself as a former MI5 and MI6 office. His suggestion seemed bizarre to some observers since those who had gone to fight for ISIL, and had tasted blood, would certainly include in their number those who wished to commit terror acts in the countries from which they come. Crooke has not simply argued that the United States and the United Kingdom “worked with the Saudis to mobilise Al-Qaeda affiliated extremists to roll back the Shia” (and thereby intentionally consolidated the rise of ISIL), but also runs a quasi-diplomatic organisation, based in Beirut, called The Conflicts Forum) (Ahmed 2014). We know (or we think we know) that for a time both the CIA and MI6 supported anti-Assad militants in Syria but did this include Al-Qaeda militants (Cockburn 2014; Hersh 2014; Ahmed 2014)?

It seems hard to believe. Nor do we know whether Crooke’s views are based on his past in MI6, assuming he has one, or whether what he is saying is true or meant to serve a clandestine purpose and has been authorised by

MI6. Whilst, if he was an officer, he will have retired from MI6 several years ago, might it be possible that his Conflict Forum's work might also be in tune with clandestine diplomacy? Crooke does not appear to have been a whistle-blower and describes himself on this website simply as a former diplomat (conflictsforum 2015). We will never know the truth because neither the British government nor MI6 will either confirm or deny anything to do with this matter. However, none of this is open secrecy.

Equally, sometimes secret service officers (rather than diplomats) are ordered to actually make secret policy. This, too, is not open secrecy because the public are never meant to get wind of such hidden dealings between states. One significant example of this kind of hidden activity is the meeting in the United States between US and British intelligence chiefs within days of 9/11 on 12 September 2001, when agreements were made as to how the secret agencies of the United Kingdom could assist in the fight against Al-Qaeda terrorism.

We appear today to have hard evidence of at least one major instance of secret diplomacy conducted by secret service chiefs that shows both the importance of secret diplomacy and how sensitive are its fruits (indeed precisely what makes such activity so perilous if it does get into the public domain). This is the famous memo of 23 July 2002, written by an official about a discussion between the prime minister Tony Blair and the then head (or "C") of SIS, Sir Richard Dearlove (*Washington Post* 2005). It was a record of a meeting, one of several in the aftermath of 9/11, at a time when it seems that the British intelligence community had become a much more significant partner of the US one. These meetings were entirely secret and are in most cases still secret. Svendsen points out that they followed a period when the director of the CIA George Tenet had overcome his conviction that such meetings were a waste of time (Svendsen 2013).

However, someone leaked to the *Sunday Times* a record of the discussion of 23 July. Dearlove told Blair

Military action is now seen as inevitable. Bush wanted to remove Saddam through military action justified by the conjunction of terrorism and WMD. But the intelligence and the facts were being fixed around the policy. The case was thin [the note taker continued] Saddam was not

threatening his neighbours and his WMD capability was less than that of Libya, North Korea or Iran.

Of course, this is just one note by an official of the view of one (admittedly very senior) secret official. If genuine (it has never been called into question although Dearlove has said its meaning was different), it plainly showed that the British prime minister was being alerted to two extremely important developments, first that the attack on Iraq was now being actively planned in Washington DC and, second, that intelligence was being “fixed” around that purpose (despite the fact that the intelligence concerning both terrorism and WMD did not rate them as being as serious a threat to Western interests as they were in respect of three other states).

Whether by “fixed”, Dearlove meant “organised to support” or “manipulated” (perhaps even dishonestly fabricated, one definition of “fixed”) is not yet clear. It is possible that the inquiry will enlighten us. However, whichever way the interpretation of the text is taken, what is being suggested is that Britain’s most important ally had decided on war, and in a narrower but no less momentous sense, intelligence activity was being organised in such a way as to win public opinion over to the policy of war. Bearing in mind that intelligence officers are committed, forever, to maintaining secrecy and that the penalties for betraying confidentiality are far more serious for them than they are for members of the foreign or domestic civil services, it is clear why such a prime minister would rely on a secret service chief for such an evaluation, and why it would have been regarded both as a truthful one and one that would remain hidden forever (in this case, it would appear that the weak link was the in the taking of the note – note taking being, for obvious reasons, not something secret agencies have traditionally shown much sympathy for doing).

Another equally unsettling policy produced by using SIS to conduct negotiations, both from a practical but also an ethical point of view, was Blair’s use of secret agencies to deal with Colonel Muammar Gaddafi in order to encourage him to get rid of his weapons of mass destruction. At some point before 2003, Blair decided he would use SIS as a back channel to Colonel Gaddafi. Whilst the public would have known when this goal had been achieved, they would not have known that it was SIS who laid the ground for it. What is more, they would most likely never have known that

it would appear that the price that was paid for winning Gaddafi's trust was that (allegedly) Blair agreed to render to Libya alleged Libyan Islamists whom the British were able to capture, (again allegedly) for the sole purposes of handing them back (Coughlin 2011). Whilst the successful attempt to get Gaddafi to rid himself of weapons of mass destruction was indeed made public, and in a sense will have counted as an example of open secrecy working well, the role of SIS in what Blair had ordered, which seems to have been the quid pro quo for it (the rendering of the men Gaddafi wanted) was not made public, was not open secrecy (it emerged only after Gaddafi had fallen) and was plainly not ethically sustainable or politically wise (Turner 2015).

A variant of this activity is where people who purport to be diplomats are actually secret service personnel. Past masters in this field were undoubtedly the USSR and its satellites. Such activity is expressly forbidden in the 1961 Vienna Convention on diplomatic relations between all states who are members of the United Nations (UN 1961, 2015). Article 3.1 lays down the duties of diplomats, Articles 9 and 41 make it clear that diplomats may not engage in espionage. At the same time, it is obvious that all states, whether liberal or totalitarian, do use their embassies as legal cover for illegal activities. In the view of Sir Michael Quinlan, Britain was "entitled" to engage in

untruth, subterfuge, intrusion, illegality at least abroad, cooperating with or employing disreputable people. Secret intelligence cannot be conducted without all or anyway most of these actions, and I am not minded to condemn it ... we were entitled to do certain of these things.

(Shukman 2000; Glees 2003)

It is plain that these examples, if genuine, have nothing to do with open secrecy but with clandestine diplomacy that accidentally became public. Whilst it is profitable to reflect on the fact that plainly intelligence officers were thought by politicians to be capable of doing a better job than diplomats, the outcomes suggest this was not so. More to the point, this matter is not the concern here.

Open secrecy: a little history

It can be demonstrated that the history of open secrecy in the United Kingdom goes back some considerable way (an early example of it was the parliamentary disclosures about necessarily secret intelligence operations following the Arcos Raid in 1927) and it must be conceded at once that its use has frequently had highly undesirable results, at any rate in part, since 1927. But perhaps the most critical have come from the publication of the two government dossiers of 2002 and 2003, in particular the former, whose purpose was to lay before the public the secret intelligence presented to the prime minister at the time, Tony Blair, which was used to justify the attack on and removal of Saddam Hussein (BBC 2002; web-archive 2015).

No one could dispute that the publication of these dossiers (as acts of open secrecy) in the short term did help the government to justify military action against Iraq, both by winning a parliamentary vote in favour of war and forming public opinion. However in the longer term the consequences of publication may fairly be said to have been disastrous. The dossiers failed to be regarded as offering definitive evidential justification of the war because the intelligence they contained was seen to be wrong (the United Kingdom is currently on its *sixth* inquiry into this war, led by Sir John Chilcot) and they did the opposite of enhancing the reputations of those in government who were involved in their production or whose agencies' assessments were published (UK Government, Sir John Chilcot 2015b). Yet all five made important contributions to the idea of open secrecy and it is to be hoped this will be true of the sixth as well. In 2005 Aldrich noted the existence of four inquiries, but apart from their Special Report on Iraq (2003), the ISC's annual report of 2004–2005 made new judgements and recommendations on the basis of further research and testimony and may be considered a further inquiry (Aldrich 2005; UK Government, ISC report 2015).

Open secrecy sits in direct opposition to all the above variants on secret and clandestine policymaking. It is not about governments doing things in secret about which the public can know nothing at all until (perhaps) many years after the event; it also has nothing to do with which embassy staff are diplomats, and which intelligence officers. It is not about doing things a government wishes to be deniable. Whilst it can be accepted that these kinds of things may go on from time to time, they are rarely productive and are

probably abuses of power. Open secrecy on the other hand is indeed about public policy that, at the time it was constructed, had a secret component to it, in part or in whole, but was always intended to be public policy, one about which the public would know as soon as possible and subject to law and oversight.

In terms of the all-important issue in any democracy of the public accountability of such a policy, whilst the public or parliament might not understand every ingredient in such a policy, it would be in a position to interrogate both policymakers and policy. Yes, it would have a secret component but, no, the policy itself was not a secret one. Open secrecy can be accepted by the public as long as they are satisfied that even if they cannot understand every input into it, the policy as a whole is one for which the government can be held accountable by themselves or by the media and that those bits of it that are secret can be examined on their behalf by the appropriate oversight authorities. However, if too much time is allowed to elapse before the public learn that there has been a secret component of the policy they will understandably regard such a policy as if it were a secret policy, and that a government making secret policies would deserve very strong criticism. There is a direct link between the acceptability of a policy fashioned from open secrecy and the time it takes for the public to know there is a secret aspect to it.

“Open secrecy” is not about the public discovering after, say, five years that a particular policy was based on secret intelligence unless it would be seriously dangerous to national security were it to be disclosed even then. In Britain, for example, there is a general acceptance that the background to most government policies will emerge at the very latest 30 years after the event (in accordance with the 30-year rule) but that memoirs of politicians and civil servants may bring disclosure long before that. At the same time it is worth noting that the rule does not apply to (secret) intelligence archives. One early example of how a secret input came to be made into a major British policy (rather than supply useful tactical intelligence) has to do with how Britain’s wartime government came to address the Nazi plan to exterminate the Jews of Europe. In one important aspect, this example shows how important secret intelligence could be. At the same time, however, it illustrates the dangers and pitfalls of allowing the existence of

secret information to become public and thereby provide the enemy with useful intelligence about the methods used to derive it.

Oddly enough this was a lesson that ought to have been learned more than a decade earlier. In 1927, MI5 received evidence to suggest that the Russian trade delegation in London was supplying the Kremlin with British secrets obtained by one of their agents (Curry 1999). The British government decided to break off diplomatic relations with the USSR, and in Parliament the prime minister, Stanley Baldwin, disclosed to the British public that his government had in its possession intercepted Soviet telegrams. The matter was then debated leading to “an orgy of governmental indiscretion about secret intelligence for which there is no parallel in modern parliamentary history” (Andrew 2009). The Kremlin realised at once that Britain could read its ciphers and the net result was that Moscow adopted “the virtually unbreakable ‘one-time pad’ ” so that “between 1927 and the end of the Second World War GCCS [the forerunner of Bletchley Park] was able to decrypt almost no high-grade Soviet communications (though it had some success with Comintern messages)” (Andrew 2009). A failure to manage open secrecy had led to a massive intelligence failure.

A similar outcome accompanied a more hidden but equally hazardous disclosure by Winston Churchill in 1941, another example of open secrecy causing a heap of problems for government. Churchill famously praised the men and women of Bletchley Park for keeping its secrets (“the golden geese who never cackled”) (flickr 2015). They must have felt rather bitter about his own cackling. On 24 August Churchill delivered a major speech broadcast on the BBC (ibiblio 2015). Speaking about what was happening behind German lines in Russia, he said

here is a devil ... who can condemn two or three millions, it may be many more, of human beings to speedy and violent death ... by the most frightful cruelties. As his armies advance, whole districts are being exterminated. Scores of thousands, literally scores of thousands of executions in cold blood are being perpetrated by the *German police troops* [my emphasis] upon the Russian patriots ... [in] methodical, merciless butchery.... We are in the presence of a crime without a name.

It seems certain that the basis of the statement about “German police troops” were the messages from the German “order police” (who were police troops) in Russia for Berlin, decrypted at Bletchley Park and taken by “C” to Churchill (Terry 2004). They made it clear that thousands of people including Jews were being slaughtered. As scholars have pointed out, by mentioning the “order police”, Churchill had inadvertently alerted the Germans to the fact that their police codes were being broken (they did not use Enigma machines for these messages so the Enigma secret was not compromised). Accordingly, on 13 September 1941 an SS general, Kurt Dalwege, issued an order (by signal) that further reports of mass killings were to be communicated “by courier” (Terry 2004). As Terry notes “British analysts were keenly aware the change had in all likelihood come about because of Churchill’s speech of 24 August”.

In the event, the damage could have been far worse. Whilst it is hard to assess the impact that this instance of open secrecy had on British and allied public opinion, it is clear that the Germans were not deterred from genocide by the realisation that their policy was less secret than they had hoped, they merely changed the methods they used to communicate with each other about it. At the same time there would seem to be a straight line leading from Churchill’s disclosure to the setting up of the tribunals at Nuremberg and the public acceptance (throughout the Western world) that war crimes trials were a necessity.

Another equally fateful example of how open secrecy can go badly wrong is, of course, the sorry story of the two British government dossiers on Iraq’s WMD capability. As has already been argued, the incapacitating and potentially catastrophic results of making policy in this particular way are seen nowhere more clearly than in the refusal of the British public to accept that the decision by the British government (approved by Parliament) to go to war against Iraq in 2003 was an open secrecy decision, apparently based on real if faulty secret intelligence, rather than a secret policy about which the public was misled.

There is bitter and lasting irony in the fact that as prime minister, Tony Blair attempted (in his two dossiers on WMD in Iraq) to transform the landscape of open secrecy, causing the less secret parts of secret intelligence to be turned into open information, publicly set out, only for this to attract the accusation that he had (in some way) “lied” to the public and therefore

been very much less than open. What is more, by attempting to use published but previously secret intelligence on Iraq to bolster his case, he found himself accused either of inventing intelligence that the agencies had not uncovered, or of instructing the agencies to falsely claim they had discovered evidence that did not exist (BBC 2002; UK Government 2002). One recently retired Joint Intelligence Committee chairman was heard to tell an academic seminar that this had been the first time Joint Intelligence reports had been published in real time, when they were still of current rather than historical value, – and that it would be the last.

Practising open secrecy today

In the final section of this chapter, current challenges to the acceptance of open secrecy by the public are reviewed and the proposition put that good government requires more open secrecy but that it must be better managed through more extensive and nuanced oversight to reassure a public that could easily become too wary of secrecy to tolerate its use in the years to come. These cases, which are chiefly concerned with the collection and mining of communications data and content (information surrounding an electronically sent message, and the actual message itself), represent challenges to open secrecy because they can be used to argue that they constitute “mass surveillance” so that even a modicum of open secrecy is undemocratic and oppressive and symptomatic of an Orwellian “national security” or secret state that has lost its moral and ethical compass (Hogan 1998).

Any current debate about open secrecy must take as its starting point the revelations (already outlined above) made by Julian Assange in 2012 and Edward Snowden in 2013. The difficulties for governments that ensued revolved around a straightforward conundrum. On the one hand, Western governments will and must continue to use secret intelligence to inform their national security policies to a greater extent than hitherto because of the increased threat levels they face from jihadists; on the other, citizens seem likely to continue to question both the extent and reliability of secret intelligence and, where that intelligence is derived from the interception of communications may well feel their own privacy has been undermined by mass government surveillance in an Orwellian attack on individual liberty.

The argument that has been endlessly rehearsed (most recently by Yuval Harari) is as follows “if we want to fight terrorism effectively we must realize that nothing the terrorists can do can defeat us. We are the only ones who can defeat ourselves, if we overreact in a misguided way to terrorist provocations” (Harari 2015). Others have put it another way: if we use secret measures to “snoop” on everyone, the terrorists will have got what they want, and they will have won. This libertarian reasoning is, of course, fallacious on all counts. Unless terrorists are countered, they will prevail; they have very clear political aims and the will to try to carry them out; governments and their agencies do not “snoop”, they are paid to conduct lawful investigations. They will break the law if they do not do so. They do not investigate everyone because the mass *collection* of communications data and content (which is done) is not the same as mass *surveillance* (which is not being done).

Modern software allows a very large number of communications to be collected, and to mine some of them for intelligence. But this is not “mass surveillance” even if (sadly) large numbers of individuals may have become, or are thinking of becoming, jihadists who certainly should be under electronic surveillance. Surveillance implies “being observed” and when undertaken by intelligence officers, it has to mean being observed on a 24-hour basis, with records being kept that could be used as evidence to indict and convict a suspect. As Dianne Feinstein, chair of the US Senate Intelligence Committee, and a doughty supporter of democratic oversight, put it “it’s not a surveillance program, it’s a data collection program” (Feinstein 2014).

It is clear that the continuum of mistrust and bitterness that binds the decision to attack Iraq in 2003 to the revelations made by Julian Assange and Edward Snowden a decade or so later, risks causing any public policy derived from any sort of secret activity to be at best likely to be contentious and at worst rejected (and its proponents vilified). In spotlighting the two sets of materials, it is important to see that the one is to do with secret diplomacy (Assange) the other to do with secret intelligence activity (Snowden). Here, it is the Snowden revelations that must concern us.

Plainly, what Snowden (mediated by the *Guardian* and the *New York Times*) told citizens was, in effect, an example of the absence of open secrecy, not its presence. Snowden’s case was the interception of

electronically derived communications was a major state secret on the part of the United States and United Kingdom (in fact many other states gained intelligence from these sources) and that it ought not to have been. The British government initially mishandled the affair by attempting at the same time to uphold the principle of secrecy in respect of its deriving intelligence from communications but refusing to regard Snowden's helper David Miranda, held for some hours in London, as someone who was illegally in possession of Britain's state secrets, a spy who should have been detained and tried under the Official Secrets Act. Instead, British intelligence chiefs, particularly the former and current directors of GCHQ (Sir Iain Lobban and Robert Hannigan) decided to explain to the public the theory behind the practice and why the revelations were so damaging (they alerted terrorists and criminals to a capacity that Britain and the United States possessed whose value was thereby allegedly but authoritatively diminished by up to 35 per cent).

In this sense, the revelations precipitated an instance of open secrecy but in a relatively chaotic way that clearly did significant damage both to the United Kingdom (and United States) governments but also to their relations with other states, particularly Germany, to their national security interests (by telling our enemies how we might get to know more about their intentions and capabilities) and to public opinion (where those libertarians who were never going to support secret intelligence gathering were given ammunition that they would otherwise not have possessed).

In this context, it is important not to forget that both Assange and Snowden (and the latter's helper Glenn Greenwald) plainly regard the Western national security state as oppressive and dangerous. Much of their publishing activity, it would seem, has to be seen in their light of their ideology and it is impossible to see how any kind of secret activity would ever be seen as acceptable by them. It follows that if secrecy is needed to ensure the survival of the liberal state, the liberal state is not going to be able to count on ever gaining the acquiescence of Snowden, Assange and the media voices that sustain them.

Initially, in mid-June 2013, it was just the NSA that the *Guardian* put in the dock, explaining how an operation called *Prism* (now avowed by the US government) allowed it to record activity on Google's and Facebook's servers. Then, a few days later, it revealed the existence of *Tempora*, a joint

operation between the NSA and the British security agency GCHQ, to collect vast quantities of digital material being carried across the world on fibre optic and other cables. Then we learned that the NSA and GCHQ also work together on *Tempora* with other agencies, in particular the German intelligence service, the BND. A further programme, *Upstream*, has also been disclosed, whose existence has been confirmed by President Obama (*Washington Post* 2014).

Publishing the details of actual intelligence operations was previously always considered, properly, a no-go area on national security grounds. The *Guardian's* justification is that Western intelligence agencies engage, or so the paper claims, in the mass surveillance of each other's populations (and therefore, thanks to exchange agreements, also their own citizens) and that since 2005 the NSA has been accessing chancellor Angela Merkel's personal mobile phone. President Obama was forced to respond, stating that the NSA are not doing this now and will not do so in the future: implying that up until this point the allegations were accurate. However, if mass surveillance per se is not taking place, a different view on what the *Guardian* has done would need to be taken.

Perhaps the most damage that the *Guardian* has done is longer term. It has attempted, with no little success, to convince many Europeans and Americans that *everyone* is being spied on by the NSA and GCHQ. Very recently the Maltese law professor Joseph Cannataci, the newly appointed UN special rapporteur on privacy, said that the world today was worse than that written about by George Orwell in 1984 "if you look at CCTV alone ... there are many parts of the English countryside where there are more cameras than Orwell could ever have imagined" (*Guardian* 2015b). He added "Snowden's revelations confirmed to many of us who have been working in this field what has been going on, and the extent to which it has gone out of control". One of his core aims at the UN will be, he says, to "assist governments in developing best practices to bring global surveillance under the rule of law". He is reported to have said that Britain has one of the weakest oversight regimes in the world: "if your oversight mechanism is a joke and a rather bad joke at the citizens' expense, for how long can you laugh it off as a joke?"

Al Gore has insisted "the evidence of secret blanket surveillance is obscenely outrageous". Tim Berners-Lee has warned of "the destruction of

human rights”. The *Guardian* itself has suggested “the secret state is just itching to gag the press”. But they do not do so. This is not what the secret agencies are doing. The press was not gagged, indeed, as we shall see, the government and the agencies are trying to appease them. Neither Snowden nor the *Guardian* (nor, indeed, Julian Assange and Bradley/Chelsea Manning) have revealed any illegal or criminal intelligence activity on the part of the US or UK governments (although it does appear that the German intelligence service the BND may have broken German law). They themselves, however, have all acted illegally. They are not actually “whistle-blowers” at all.

Intelligence gathering must, of course, be lawful or at any rate compliant with the laws governing secret activity, just as intelligence agencies must be subject to stringent and strong democratic oversight. Unless they are fully accountable they will not be trusted, it is as simple as that. It is deeply ironic that when the UK government, earlier this year, attempted to introduce a bill to introduce lawfulness into the Wild West of the Internet (at the agencies’ suggestion) it was the right-wing libertarians in the Conservative Party who joined forces with the Liberal Democrats and the civil liberty lobbyists to prevent this. Civil liberties are not undermined by lawful data mining, they are protected by it. Germans proved some of the most hostile opponents of interception. Yet they should understand better than anyone else what happens when liberal democracies are subverted by extremists and terrorists.

When Andrew Parker, head of MI5, stated that the *Guardian*’s stories were “the gift the terrorists need to evade us and strike at will” and that they have “eroded the margin of advantage vital to the security of the UK”, it was hard to understand why the British government have not used official secrets legislation to bring this damaging situation to a proper and lawful conclusion (Parker 2013). As Parker says, “the idea that we either can or would want to operate intensive scrutiny of thousands is fanciful. We are not East Germany or North Korea, thank Goodness”. Why would we not want to believe him? Why should we believe Alan Rusbridger, the *Guardian*’s editor at the time, who decided what was and was not to be published, knew more about this country’s security needs than Andrew Parker?

The conclusion to be reached, then, is that even if governments wished to put the genie back into the bottle, and return to levels of strictest secrecy that applied in previous times, not only is there no chance that this could be successful but there is no need for it either. Whilst it is true that many, if not most, examples of the use of open secrecy have not ended well for governments, this is not a reason to abandon the concept. Mature democracies and mature electorates should know of secret inputs into major national policies. Rather it is the case that open secrecy must be far better managed, and its existence far better explained, than has so far been the rule.

Open secrecy in a culture of lawfulness and accountability

In the wake of the revelations made by Julian Assange and Edward Snowden, and coming fast on the heels of public disquiet surrounding the work of the secret agencies in bringing about the attack on Iraq in 2003, it seems that those who reject the notion that secrecy can ever be lawful, or its use justified in delivering national security, are steadily gaining ground.

Ever since 1989, when the then government established Britain's Security Service (or MI5) in statutory law for the first time in almost a century (followed in 1994 by the establishment on a similar legal basis for the Secret Intelligence Service (or MI6) and GCHQ, the government's communications and codebreaking centre, secret activity and lawfulness, open secrecy in other words, have been seen by government and secret agencies as needing to be in harmony in order to gain public trust and define the extent to which agencies could legally do things that would be illegal if individual citizens did them (UK Government, Legislation 1989, 1994). The importance attached to the principle that secret activity must be lawful became even more pronounced in 1998 when Britain absorbed into its domestic law the European Convention on Human Rights (ECHR).

It is worth emphasising that the 1994 Act also created the ISC of Parliament as an oversight body over the secret agencies to ensure lawfulness. In 2000 the Regulation of Investigatory Powers Act (UK Government, RIPA 2000) became law (UK Government 2000). It was conceived to be both technologically neutral (that is to say that advances in technology could not outpace its provisions) and in every way fully

compatible with the European Convention on Human Rights. Via RIPA various other “oversight” bodies and personnel have come into existence. In 2011, for example, the prime minister appointed Sir Mark Waller to be the Intelligence Services Commissioner (UK Government 2011). He provides “independent external oversight of the use of their intrusive powers by the intelligence services and parts of the Ministry of Defence”.

One of the several legal bodies established to prove to the public that secrecy can be legal, can be monitored and is vital if democracy is to survive, the Investigatory Powers Tribunal (IPT), set out the case argued here a decade ago:

problems [aligning secret activity to the ECHR] arise from the inescapable and incontrovertible fact that interception ... and covert surveillance must, if they are to be used effectively, be and remain secret.... One of the main responsibilities of a democratically elected government and its ministers is to safeguard national security. Intelligence gathering by the use of investigatory powers is an essential part of that function. Otherwise it may not be possible to forecast and foil attempts to overthrow democratic institutions and laws (including Convention rights) by undemocratic means.

(UK Government, IPT 2003)

For many years, successive governments have dealt with questions deemed too sensitive to answer by neither confirming nor denying secret intelligence-related claims. But it would be quite wrong to suggest this gives governments a licence to break their own laws. Even secret activity must always be lawfully conducted in mature liberal democracies and, where the law is broken, those responsible must face its rigours. However, the IPT itself holds the secret agencies to most careful account, as anyone reading its copious reports can attest (UK Government, GCHQ 2014; UK Government, IPT 2015). Another significant oversight body, the Interception of Communications Commissioner’s office, known as IOCCO, led by Sir Anthony May from 2012 to May 2015 (his successor has yet to be appointed), has ten inspectors (UK Government, IOCCO 2015). The official oversight of the secret services is complemented by media and academic investigations, which taken together must mean the United Kingdom, at any rate, has one

of the most highly regulated and watched-over intelligence communities in the world, even if much of its work remains secret as far as the citizen is concerned.

The regulators take their work seriously. Where laws have been infringed this is reported in public (*Guardian* 2015c; *New York Times* 2015; *Daily Mail* 2011). In 2013–2014, 2,795 warrants to intercept communications were granted to the nine agencies and bodies entitled to request them (these include MI6 and MI5). IOCCO carried out 116 RIPA investigations and made over 400 recommendations to ensure compliance or to improve systems and procedures (UK Government, IOCCO 2015). In 2014, police, councils and other bodies made a total of 517,208 applications to collect communications data (one case may require several applications); 998 errors including 17 cases of “serious errors” were found (many of which related to child sex abuse) (*Daily Telegraph* 2015). Of these applications, 50,000 (9.8 per cent of the total) came from the UK intelligence community (UK Government, IOCCO 2015).

Whilst all errors are clearly bad (IOCCO itself says “although the numbers are small the consequences are significant and they can be devastating”) they do not add up in any sense to a case for banning interception, still less for claiming it is unregulated or unlawful. On the contrary, lawful interception of communications data now plays a major role in securing convictions of the guilty and exculpating the innocent by demonstrating who was where, and when. Happily the vast majority of secret infringements that contravened legal guidelines have been technical and minor (although a claim that British intelligence colluded in some way with CIA torture was settled out of court and so, for the time being, the issue remains open).

Despite the fact that there is no evidence to show that RIPA 2000 was inherently flawed or that Snowden’s revelations had demonstrated serious lawbreaking in the United Kingdom when it came to intelligence gathering, a European Court of Justice ruling in April 2014 required the UK government to produce revised legislation (the Data Retention and Investigatory Powers Act, DRIPA, 2014) requiring Internet service providers to undertake data retention. In return for passing these laws, libertarians in Parliament and pressure groups outside of it forced the government to agree a review of the operation and regulation of all investigatory powers; that

review (significantly entitled *A Question of Trust*) was written by David Anderson QC, the independent reviewer of terrorism legislation, and published in May 2015 (UK Government, David Anderson QC Report 2015e; Bit-tech 2015).

He concluded, with surprising vehemence, that RIPA 2000 was “undemocratic, unnecessary and intolerable” and made several suggestions for its reform (of which the most significant was, perhaps, the passing of authority to intercept communications from the home secretary to a panel of judges, transferring the power of interception from elected politicians to the judiciary). It seems plausible to conclude that by not countering Anderson’s conclusions, the government decided the time had come to accept the damage that Snowden had done (based, perhaps for reasons of political expediency, more on an assessment of public perceptions than the actual facts of the matter) and move on with new legislation. Even a seasoned observer of intelligence and secrecy issues, Sir David Omand (Tony Blair’s security and intelligence coordinator and a former head of GCHQ), who had claimed credibly that Snowden had done more damage to British intelligence than had ever done before, could say before Anderson’s report was published that RIPA 2000 was a fine piece of legislation but just a few hours later, when it had been, that the report should be fully accepted and supported (Omand 2013). It follows that if this is indeed more about expediency than reality, the government and its secret agencies hope a new law will win back public trust in open secrecy in practice. Transferring authority from (elected) politicians to a judiciary who are politically neutral may serve the same purpose.

The same need to win back the confidence of the public seems to have motivated the decision by the ISC to undertake an inquiry into “Privacy and Security” (UK Government, ISC report 2015). It concluded, broadly, that intrusion into privacy and the continued interception and mining of data communications was “an essential investigative capability” and lawful in the fight against terrorism and serious organised crime because GCHQ’s “interception process is not indiscriminate” and that “our scrutiny of GCHQ’s bulk interception via different methods has shown that while they collect large numbers of items these have all been targeted in some way”. They also argued that “ministers are democratically accountable for their decisions. It is therefore right that responsibility for authorizing warrants for

intrusive activities remains with them. It is ministers, not judges, who should, and do, justify their decisions to the public". At the same time, the committee proposed new legislation to set out clearly the whole variety of intrusive capabilities used by agencies.

However, what the committee did not do but should do is recommend that it should itself be reformed. At the time of writing the committee has been without a chair for six months and the committee itself has gone into abeyance following the election of June 2015 (the previous chair, Sir Malcolm Rifkind, was forced to resign over what he called "errors of judgement" in a business matter in February 2015) (*Guardian* 2015d). That the United Kingdom should be without a functioning oversight body for six months should not be seen as acceptable. No less importantly because the committee is appointed personally by the prime minister and is neither a select committee of Parliament, nor able to appoint non-parliamentarians whilst also lacking a large investigative capacity, many observers believe that its oversight abilities and its complete political independence are not as assured as they should be. Those arguing for open secrecy will want the committee to be seen by government as a work in progress rather than a finished product, if it is to retain the trust of the public. It fulfils an increasingly important function and, if reformed, could resolve many of the tensions that must exist between when the theory of open democratic government comes up against the practice of secret, intelligence-led activity.

The case that has been made is that is if the public can be convinced that open secrecy is a genuine attempt to exploit secrecy in the interests of democracy and that its operational breadth and ethics are in tune with these objectives and is also ethically sustainable, then their tolerance for a policy that has a significant secret component is unlikely to be weakened. Recent polls suggest a significant majority of British citizens do in fact continue to tolerate secret, intelligence-led activity (*YouGov* 2013; TNS Global 2014; Cable 2015). Of those asked in February 2014 (some six months after the Snowden revelations), 71 per cent said they believed the government was justified in eroding their right to privacy in the pursuit of terrorists or serious criminals. Only 29 per cent believed their right to privacy should be a priority over efforts to track terrorism, while 66 per cent believed secret agencies should be allowed to "access and store" Internet communications and 64 per cent said agencies could do this by "monitoring" the

communications of the public at large. Of those polled, 27 per cent said they believed “surveillance” was “too intrusive”. In October 2013 (with specific reference to the Snowden affair), only 19 per cent of the British public thought the secret agencies should be required to reduce their power of surveillance. In short, there is no evidence to support the view that the British public wish to eschew secret activity as long as it is open; they may know there is a “hidden hand” involved in policymaking but they are happy this is so and perhaps expect there to be one (Aldrich 2001). It was wrong, however, to discount the importance of the libertarian case against secrecy: public opinion can change very quickly.

Conclusion

Secret activity by government is both necessary in theory and practice and not intrinsically unlawful if defined by law. It may offend against a blanket belief in the virtues of total transparency in public affairs but that is a matter of taste not high policy (it is paradoxical that the libertarian argument in favour of public transparency is frequently matched with an equally passionate adherence to personal secrecy). Open secrecy can become a more widely accepted principle of modern governance in the face of national security threats, but only if it follows a lawful path, remains compliant with the European Convention on Human Rights and is subject to close public scrutiny and stronger oversight.

We live in a world where libertarian views seem to be gaining traction. Large sections of the political class now seem ever more convinced that we, its citizens, possess an inalienable right to privacy especially when it comes to our communications with our fellow citizens or when we access the Internet. One leading libertarian, Isabella Sankey, was asked by the ISC for their privacy inquiry whether her organisation (Liberty) and her colleagues (Big Brother Watch) agreed the proposition that bulk interception should be unacceptable in a free society, even if it meant terrorism might succeed, she replied, very clearly (and chillingly) “yes” (UK Government, ISC report 2015). Leaving to one side the fact that the interception of communications during and after the Second World War has always been seen as not just appropriate but as a vital weapon in the defence of democracy against totalitarianism, the libertarian position seems to be that personal secrecy must be

safeguarded even at the cost of public security; that secrecy is legitimate for individuals but not for the governments they have democratically elected. This is an argument that is as banal as it is unhistorical and dangerous. A democratic government can lawfully act in secret in the public interest, but it would be self-evidently against the public interest for an individual's unlawful acts to be accepted as legitimate simply by being conducted in secret. Privacy has never been regarded as an absolute right whereas security reaches that threshold where realistically and lawfully deliverable.

It would be entirely correct to argue that if Britain were not a liberal democracy, security would have a different meaning and that laws governing the delivery of security by a democratic and liberal government should naturally never be capable of abuse by any future, non-democratic regime. However, pursuing this line of argument is pointless because if Britain were to cease to be a lawful democracy, its present security and intelligence community, and the laws under which they operate, would be abolished. For now, any new laws on security and secret activity should certainly echo the stipulation of the 1989 and 1994 Acts that there should be a statutory duty imposed on Britain's secret agencies to uphold its national liberty. Equally, it is vital that unless the United Kingdom retains in law the European Convention on Human Rights, public trust in open secrecy would vanish as the snow in summer. What is more, it would deserve to do so. Without lawfulness there can be no liberty and there can be no liberty without security.

7 The ethics of secret diplomacy

A contextual approach¹

Corneliu Bjola

Introduction

On 8 January 1918, US president Woodrow Wilson delivered his famous Fourteen Points speech to a joint session of the US Congress. On top of the list, Wilson called for “open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view” (Wilson 1918). Wilson’s idea that all international treaties should be transparently negotiated and ratified by parliaments like all other domestic laws was informed by a well-established American political creed “that it was possible to apply to the conduct of external affairs, the ideas and practices which, in the conduct of internal affairs, had for generations been regarded as the essentials of liberal democracy” (Nicolson 1988: 84). What made the idea of “open covenants of peace” more acceptable to sceptical Europeans was the First World War, which was largely blamed on the constellation of secret alliances concluded by European great powers before the war. The unprecedented devastation brought about by the First World War simply made the political pendulum swing in favour of transparency and accountability. The expectation was the latter “would not bring Utopia, but it would make diplomacy honest, straightforward, clean; it would make almost impossible the chicanery, fraud, intrigue that for centuries have deluged Europe in blood and brought misery” (Low 1918: 220).

By calling for diplomatic relations to be conducted in conditions of transparency and accountability, Wilson's "new diplomacy" has been credited with fundamentally reshaping the norms of diplomatic conduct (Bjola and Kornprobst 2013: 28–43). At the same time, the original promise that "diplomacy shall proceed always frankly and in the public view" has arguably remained unfulfilled. It is not that foreign policy lacks parliamentary oversight in democratic countries, but rather that the scrutiny of diplomatic decision-making is primarily done behind closed doors, with little or no formal input from the public. This invites the question of whether a certain degree of "democratic deficit" is not actually necessary for diplomacy to be effective and if yes, where should the line be drawn between secrecy and transparency? In other words, what are the ethical boundaries of secret diplomacy? Wilson himself had to confront this dilemma. Faced with the prospect of a protracted and fruitless peace conference (Kissinger 1994: 232), Wilson had to backtrack on his promise to have an "open conference" in Paris and allowed great powers to take control of the conference proceedings and conduct all negotiations in closed meetings.

The question of the ethics of secret diplomacy is not, of course, a matter only of historical interest. Media investigations of the secret diplomacy of the United States' extraordinary rendition programme, the release of various unclassified diplomatic cables by WikiLeaks or Edward Snowden's revelations about the US global surveillance network have forcefully restated the case in the public arena. For many diplomats and governmental officials, media transgressions of the confidentiality of diplomatic activities could severely disrupt relationships between countries or even put the life of diplomats at risk. For others, the secrecy of diplomatic engagements is a recipe for abuse, ineffectiveness and even conflict. What seems therefore to be lacking is a compelling framework for assessing the ethical value and limitations of secret diplomacy. Drawing on theories of political and ethical judgement, this article bridges this analytical gap by developing an innovative approach to normative analysis focused not on the outcome of secret diplomacy, but on its context of application.

I will pursue this argument in four steps. First, I will discuss a number of reasons and situations in which – despite the international trend towards openness in diplomacy – secret diplomacy may still be advantageous to the

diplomatic process. Second, I will review the oft-heard critique of such practices concerning its effect on societal relations, diplomatic interaction, and democratic objectives. Third, I will advance a contextually-grounded approach to the ethical analysis of secret diplomacy centred on three dimensions: the normative relevance of the general principles of justification, the factual grounding of these principles to the case at hand, and the level of critical reflection actors demonstrate in their moral reasoning process. Fourth, I will empirically apply this framework to the case of the secret diplomacy of the US extraordinary rendition programme. I will conclude by asserting that secret diplomacy remains an effective instrument of international engagement provided that it follows a minimum set of normative constraints.

The case in support of secret diplomacy

Secret diplomacy is characterised by “the total isolation and exclusion of the media and the public from negotiations and related policy-making” (Gilboa 1998: 213). It assigns state officials a high level of discretion in international negotiations, while it leaves the wider public and its opinion ignorant of the main diplomatic events or courses of action. Conceptually, secret diplomacy covers a wide spectrum of positions ranging from quasi-formalised forms such as the backchannel diplomacy often used by the leadership of opposing groups as an adjunct to front-channel negotiations (Pruitt 2008: 37–8) to highly-deniable methods such as the clandestine diplomacy conducted by secret intelligence services (Scott 2004: 330–1).

At the heart of the practice of secret diplomacy is a crucial question about information control: who knows what, when and especially, to what purpose? Machiavelli, for instance, evaluated the performance of ambassadors by their ability to secretly gather relevant information about “matters in course of negotiation”, “matters that are concluded and done”, and especially about “matters yet to be done” (Berridge 2004: 41–2). The rise and consolidation of the modern territorial-sovereign state intensified the concern for gathering and protecting information (Hamilton and Langhorne 2011: 75) to the point that the “old diplomacy” became tantamount to secrecy and formality. While becoming less prominent since the end of the First

World War, secret diplomacy remains a preferred method of diplomatic interaction for a number of reasons.

First, secret diplomacy may serve to *unlock peace negotiations* by insulating leaders against grandstanding and providing a conducive environment for constructive talks. As Abba Eban – former ambassador and foreign minister of Israel – noted, “the hard truth is that the total denial of privacy even in the early stages of a negotiation has made international agreements harder to obtain than ever in past history” (Eban 1983: 347). For the negotiating parties as well as for mediators, partaking in secret negotiations ensures a minimum level of security, informality and the opportunity to “save face”. Anwar Sadat’s visit to Jerusalem in 1977, which led to the conclusion of a formal peace agreement between Egypt and Israel, was facilitated, for instance, by the secret meeting between the Israeli foreign minister Moshe Dayan and the Egyptian deputy minister Hassan Tuhamy (Gilboa 1998: 213). Similarly, without secrecy there would have been no Oslo Accord in 1993 since neither Israel nor the Palestine Liberation Organization (PLO) would have chosen to negotiate openly due to each leadership’s internal political constraints (Lieberfeld 2008: 136–8).

Second, secret diplomacy may prove beneficial for *normalising relationships* with former adversaries. Protracted relations of enmity generally require significant political capital to break, which leaders might not be willing to entertain unless the benefits are clear and tangible. Henry Kissinger credited, for example, the dramatic shift in the American foreign policy and the historic visit of President Nixon to China in 1972 to his secret diplomatic contacts with the Chinese leadership: “Sino-American relations moved from strident hostility and isolation to de facto alliance” in barely a year and a half, enabling “the Nixon Administration to put in place ... a new structure of peace” (Kissinger 1994: 729). Both the United States and China required the rapprochement as a diplomatic leverage against the Soviet Union and both had leaders that were willing to spend political capital on normalising the relationships between the two countries.

Third, secret diplomacy may *prevent dangerous escalations* by protecting the reputation of a government from political embarrassment or damage. Indeed, if a government has publicly proclaimed policy preferences or advocated particular stances on international affairs, negotiating agreements that go against these statements may significantly undercut their credibility.

Such considerations undoubtedly influenced the Soviet Union's decision to resort to secret diplomacy in its interaction with China concerning the issue of the Chinese Eastern Railway (CER) in the 1920s. In these diplomatic encounters, the Soviet Union renewed control over the Russian-built CER despite a 1919 Soviet manifesto promising the return of the railway to China without compensation. This territorial expansion "flew in the face of Soviet propaganda, which repeatedly called on the other great powers to follow the USSR's lead and give up their concessions in China" (Elleman 1994: 459). At the same time, Beijing could not publicly protest against the enforcement or violation of existing treaties, because this would have exposed its agreement to a secret protocol in which they actually recognised the former unequal treaties, a fact that could have seriously undermined the legitimacy of the then Chinese government (Elleman 1994: 469).

Finally, secret diplomacy may help *increase the diplomatic stature of small states*. Certainly, the latter have various other means by which to enhance their diplomatic profile, particularly through their work in international organisations (Cooper and Shaw 2009). However, small states possess two critical assets that are uniquely important for the conduct of secret diplomacy: the perceived lack of international visibility of the negotiation venue and the restricted scope of their global or regional aspirations. Hungary, for instance, functioned as an effective intermediary between Washington and Hanoi during the 37-day pause in the US bombing campaign against North Vietnam in December 1965–January 1966 (Szo"ke 2010). As noted above, Pakistan played a major role in facilitating secret contacts between the United States and China, but only after the secret diplomatic back-channel facilitated by Poland had failed to yield satisfactory results (Kissinger 1994: 726). More recently, Qatar has helped establish a secret channel of communication between the United States and Taliban representatives, which allows the two parties to discuss preliminary trust-building measures in anticipation of more comprehensive talks about how to end the war in Afghanistan (Rubin 2012).

The case against secret diplomacy

Despite these advantages, the practice of secret diplomacy has been severely criticised by scholars and practitioners alike. Indeed, it is often argued that a

number of “vices” plague the practice of secret diplomacy. First of all, secrecy is a potent *cause for continued distrust*, fear and hate. Describing the international diplomatic arena in the pre-First World War period, Reinsch observed that:

Distrust is planted everywhere. There is no assurance of what is the truth; true reports are questioned; false reports, believed. All motives are under suspicion. The public conscience and will are beclouded; nothing stands out as reliable but stark military force.

(Reinsch 1922: 6)

This type of concerns has prompted Bok to argue there should be no secrecy about the fact that negotiations are under way, or about who the parties to the negotiations are, and especially, about the terms of the settlement agreed upon (Bok 1984: 186). Otherwise, secret engagements can turn diplomacy against itself by undermining the very *raison d'être* of diplomatic interactions that is, the building of trust and confidence among parties and the facilitation of international cooperation.

Second, secret diplomacy is *vulnerable to precarious transgressions* between legitimate diplomatic conduct and covert action. To be sure, modern diplomacy and espionage have evolved in close proximity to each other to the extent that often times the same people have coordinated both areas of activity. Metternich, for instance, possessed one of the most reputed intelligence services. At the Congress of Vienna, the ability of his agents, diplomatic couriers and embassy servants to gather relevant information provided him with a crucial negotiation advantage (Hamilton and Langhorne 2011: 122). However, many diplomatic and intelligence agents have since then come to realise the conflation of diplomatic interaction with covert action may be detrimental to both. As Hicks points out, maintaining the boundary between covert action and diplomacy is critical for the protection of the credibility and reputation of intelligence services (Hicks 2005: 248). The same holds true for diplomats, as their reputation rests on their ability to be recognised as truthful and reliable. Occasional collusions between covert action and diplomacy are inevitable, but as a former intelligence officer wisely argued covert action should not be used as the “lazy country’s way of avoiding hard diplomatic work” (Stempel 2007: 132).

Third, secret diplomacy goes *against fundamental norms and principles of democratic rule* such as the obligation of elected leaders to represent the public and to stand accountable for their decisions. This requires that affairs that are of domestic concern should not be determined by “a board of trustees in secret conclave”, but should rather be made part of the public debate (Reinsch 1922: 4). This raises an important ethical issue: is it allowed for officials to lie to the public for the “greater good”? As Habermas long pointed out, the formation of modern democratic societies has been intimately connected to efforts of establishing a vibrant public sphere in which reasoned argumentation rather than appeal to tradition and secrecy constitutes the ultimate authority for settling political differences (Habermas 1989). It therefore stands to reason that excessive state secrecy can become a mark of pollution for any democratic regime, which can only be removed through an act of “purification” in the public sphere (Ku 1998:181). In addition, while the insulation of negotiators can facilitate success at the bargaining table, the lack of democratic accountability may come at a price. Secret diplomacy can make negotiators overestimate what they can implement amid domestic opposition once the agreement enters the public domain, an argument that has been generally credited for the failure of the Oslo agreement (Lieberfeld 2008: 140).

Fourth, secret diplomacy has become increasingly *impractical* due to developments in communication technology and the growing demand for public accountability. There is no coincidence that secret diplomacy was prevalent in a historical period in which communication between diplomats was slow, fragmented and uncertain. This is no longer the case. Not only are diplomats constantly forced to react to the 24/7 news cycle, but they increasingly find themselves in the situation to compete for public attention in a media-saturated environment (Archetti 2012: 193). At the same time, greater accountability, access to information, and open dialogue are increasingly seen as essential norms for the conduct of foreign policy (Hicks 2005: 259). The fiasco of the Iraqi weapons of mass destruction has made the demand for great transparency and accountability of foreign policy decision-making even more stringent (Fisher 2003). One is therefore left wondering, as a German diplomat concluded, whether there is “next to nothing left of the traditional role of secrecy in formulating foreign policy and in conducting diplomacy” (von Staden 1987: 51).

Contextual ethics: seizing the middle-ground?

Thus far I have shown that a good case can be made both in favour and against secret diplomacy. What is less clear, of course, is whether the gap between diplomatic secrecy and transparency can be bridged and if yes, under what ethical conditions? The question goes to the heart of the classical “dirty hand” problem that takes place “in extreme circumstances where there is a choice between two evils and whatever decision is taken a moral principle is violated” (Ramsay 2011: 628). In the case of secret diplomacy, the moral paradox of dirty hands decisions arises because the lesser evil choice (the practice of deception) remains morally disagreeable even if it is judged to be politically necessary and justified on strategic or national security reasons.

Part of the difficulty to answer this question lies with the ambiguous moral connotations of the term “secrecy” itself. As Bok points out, the term “secrecy” carries with it not only a neutral connotation of “professional confidentiality”, but also a more problematic and endemic aspect of “stealth and furtiveness, lying and denial” (Bok 1984: 6). In addition, secrecy is morally constrained by the requirement of equality. If the right to secrecy is granted to an individual, should the same right be extended, in the absence of special considerations, to everyone else in a similar position (Bok 1984: 27)? By association, the concept of secret diplomacy trades on both aspects to the extent that it often becomes difficult to ascertain when one connotation should be epistemically privileged over the other. Did President Kennedy demonstrate professionalism or dishonesty when he secretly negotiated the removal of nuclear missiles from Turkey during the Cuban Missile Crisis? Similarly, should the same right be unreservedly granted to all US presidents regardless of the circumstances?

In an attempt to illuminate these tensions, I argue that an “ethics without ontology” (Putnam 2004) offers the appropriate epistemic framework for making sense of the normative parameters of secret diplomacy. More specifically, successful ethical analysis of secret diplomacy requires an understanding of the concrete situations within which the demand for secret diplomacy arises and of the contextual considerations informing the reasoning process and the value formation through reflection of the actors involved. I defend this claim in two steps: first, by explaining why a

contextually-grounded ethics is necessary for understanding the normative limits of secret diplomacy and second, by discussing how such an ethical analysis can be conceptualised and executed.

Drawing on the work of John Dewey, Putnam refuses to endorse the idea the main function of ethics is to arrive at “universal principles” of human conduct. For him, the “primary aim of the ethicist [is not to] produce a ‘system’, but to contribute to the solution of practical problems” (Putnam 2004: 4). At the core of his argument in favour of “pragmatic pluralism” (Putnam 2004: 21) lies an original interpretation of the fact/value dichotomy, which is particularly relevant for the ethical analysis of secret diplomacy. Putnam strongly disagrees with the logical positivist view that values are immune to scientific analysis (House 2001: 313) and instead insists that factual descriptions and normative evaluations are inevitably entangled. More specifically, he defends the position that “knowledge of facts presupposes knowledge of values” to the extent that

(i) that the activity of justifying factual claims presupposes value judgments, and (ii) that we must regard those value judgments as capable of being right [...], if we are not to fall into subjectivism with respect to the factual claims themselves.

(Putnam 2002: 137)

In other words, for Putnam values always come into play when we make factual statements about the world, an insight that has two important implications for the normative study of secret diplomacy.

First, it explains why prudential reasoning is an unsatisfactory normative defence of secret diplomacy. To justify a particular behaviour as prudent requires an instrumental assessment of the benefits and drawbacks of the intended action. Such a prudential evaluation would nevertheless fail to yield sound ethical insights as it would lack a theory to compare the values informing the factual “benefits” and “drawbacks” of such an action. This is why the second analytical contribution of Putnam’s critique of the fact/value dichotomy is also relevant to the current discussion. Moral judgements are not made in the abstract, but through engagement with concrete and problematic situations. Any moral inquiry has both “factual” and “value” presuppositions and it is only through experimentation and

reflection that we discover which ones are better and which worse (Putnam 2002: 97). New moral paradigms are thus formed over time that shift the equilibrium that has hitherto been maintained. In other words, what Putnam tells us is that without understanding the context of the situation, we cannot ascertain the facts and values that are relevant to the case and by extension, the ethical implications their entanglement may have on the conduct of secret diplomacy.

If Putnam is right, then a key issue requires clarification: how does the fact/value entanglement actually work? How do facts inform the selection of values and how do the latter, in turn, subsequently frame new factual descriptions of the case? More specifically, how does the context inform actors about what values to consider when deciding on a particular course of action and how the selected values shape actors' subsequent reading of the context? Drawing on ground-breaking studies of cognitive psychology, Dworkin argues that individuals go about making moral judgements by recognising patterns on the basis of various cues and features, which they have stored in memory from previous experiences. Prior to being confronted with a particular case, we have built up a series of moral judgements in paradigm cases through socialisation and practical experience. When faced with a moral situation, we search for the appropriate ethical paradigm that bears relevance for the case and make a judgement accordingly (Dworkin 1995: 234–6).

Kornprobst's theory of political judgement takes Dworkin's argument a step further. Drawing on theories of social action, Kornprobst argues that individual actors figure out what to do in their engagement with the world by "subsuming the particulars of the situation ..., under selected universals of political life" (Kornprobst 2011: 81–2). Universals are the "tool kit" of taken-for-granted ideas that individuals acquire through socialisation and which assist them in making sense of political life, such as causal and constitutive relationships, standards of behaviour or norms of social status (Kornprobst 2011: 78). The case of secret diplomacy serving to unlock peace negotiations, normalise relationships or by contrast, fuel distrust or undermine democratic principles are, for instance, examples of universals that diplomats learn to include in their repertoire of background knowledge through socialisation, training or practical experience.

Particulars, on the other hand, are much more specific. While they do not exist without universals, they help translate the latter into social action. In other words, particulars are the concrete ideational lens through which individuals interpret social circumstances in the light of appropriate universals and learn to orient themselves in a given political situation (Kornprobst 2011: 78). For example, the particulars (P) of a negotiation setting become intelligible to a diplomat because she finds a universal category (U) – such as, for instance, the notion of negotiation breakthrough – which is familiar to her and she interprets P to be an instance of U. In short, U contains the clues for how to make sense of P and as a result the diplomat subsumes P under U through a creative act (Kornprobst 2011: 78).

While Putnam provides the broader epistemic justification for a contextual approach to the ethics of secret diplomacy, Dworkin's and especially Kornprobst's model offer an original theoretical anchor for conducting the ethical analysis. Formally stated, a contextually-grounded ethics of secret diplomacy can be expressed as follows: *secret diplomatic actions are normatively justified if they are supported by morally relevant principles (S1), which have a reasonably factual bearing on the case at hand (S2) and actors are critically reflective about the broader implications of their actions for the conduct of diplomacy (S3)*. In other words, not any type of value/fact entanglement is ethically justifiable for engaging in secret diplomacy, but only those observing the conditions stipulated in statements S1–3. Three important assumptions are embedded in this definition. First, the process by which actors reason their normative justifications in favour of secret diplomacy is an essential component of the ethical analysis. In line with Putnam's "ethics without ontology" approach, the ethical theory I propose is not informed by abstract normative principles applicable to any circumstances and at any time. Instead, it draws on the actors' own ethical beliefs and practical experiences to probe the normative relevance of the arguments they propose (S1).

Second, the context of the case and the moral principles to guide the application of secret diplomacy are connected with each other in a manner that both reinforces and challenges the value/fact entanglement that frames the reading of the case. While actors draw moral inspiration from various taken-for-granted ideas, as Dworkin and Kornprobst argue, the application of these normative principles in practice must speak to the facts of the case

in a consistent and effective manner (S2). Third, the statement takes note of the fact that the fundamental role of diplomacy is to mediate relations of separateness between political communities (Sharp 2009: 89–92; Bjola 2013). This function is made possible by a complex set of norms developed over time for the purpose of facilitating peaceful dialogue and international cooperation (Bjola and Kornprobst 2013). Therefore, the resort to secret diplomacy should follow a process of critical reflection about whether the intended actions may actually undermine fundamental principles that make diplomacy possible in the first place (S3).

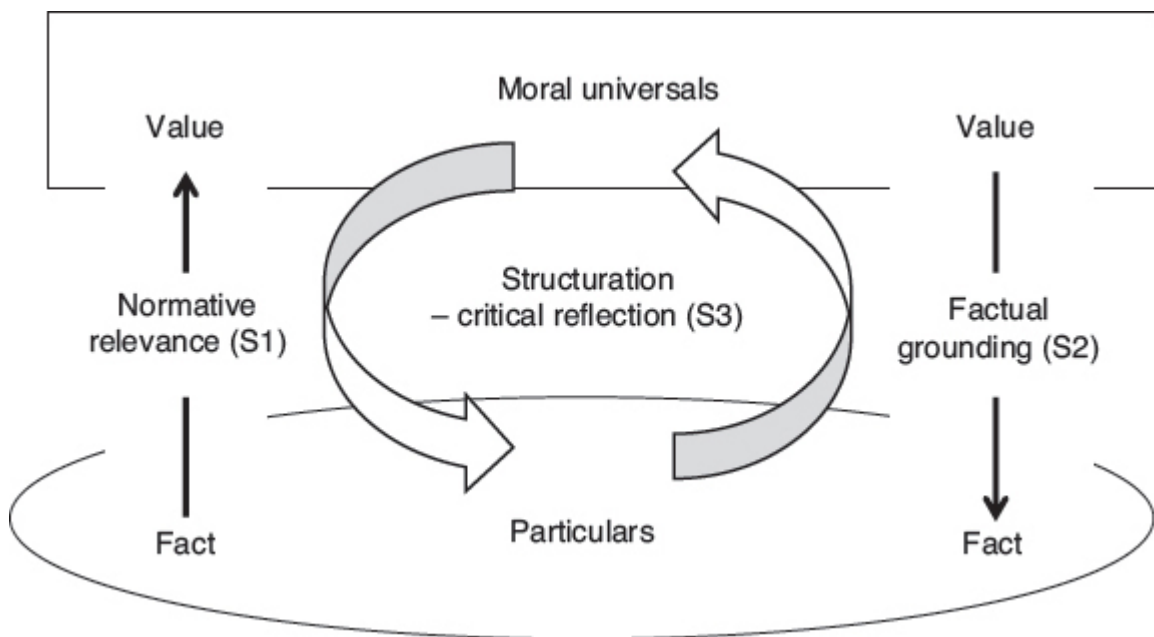


Figure 7.1 Contextual framework of ethical analysis.

Three conceptual clarifications are necessary for operationalising the contextual ethical framework described above (see Figure 7.1). First, we need a *value statement* to compare the validity of the moral universals invoked by parties in support of their decision to engage in secret diplomacy. While parties may find difficult to escape their past, they nevertheless have some discretion in selecting the relevant universals by which to interpret a particular situation as appropriate for secret diplomacy.² As Dworkin points out, moral reasoning is not simply a matter of “seeing” that two cases are similar. It is also important that this process involves the search for paradigms that may give different results (Dworkin 1995: 236), hence the

need for careful reflection, deliberation and adjudication. The application of *normative relevance* as a benchmark for contextual ethical analysis would therefore allow us to examine the extent to which parties are right to invoke certain universals and whether the parties' repudiation of more transparent methods of diplomatic engagement is reasonably justified in view of past experiences.

Second, we need a *factual statement* to compare the validity of the factual descriptions to result from the actors' transposition of the selected universals to the case at hand. While normative relevance covers one side of the fact/value entanglement such as how *general* factual descriptions of the case inform the selection of moral universals, *factual grounding* addresses the reverse trajectory that is, how the selected universals frame, in turn, justifications of *specific* particulars to arise from the case. As Kornprobst points out, political leaders cannot attach just any meaning to a particular situation, as they are constrained in doing so by the contextual elements of the circumstances they face (Kornprobst 2011: 86). Factual grounding thus serves as a second and critical level of confirmation of the appropriateness of the moral universals invoked in support of secret diplomacy. Obviously, no transposition is ever fully accurate since the context of application of the selected universals may noticeably vary from case to case, but excessive deviation between particulars and universals calls into question the integrity of actors' reasoning and by that, the ethical foundation of the case.

Third, we need an *interactionist statement* to compare the structuration validity of the normative standards generated by the value/fact entanglement. Contextual reasoning is not static as it does not merely involve an act of juxtaposing taken-for-granted universals shaped by past judgements to the specific circumstances of the case. It also has a "structuration effect" in the sense that it helps create "new universals out of already existing ones, out of particulars, or out of linkages between universals and particulars" (Kornprobst 2011: 86–7). This is important because universals "travel" and may become part of the broader diplomatic repertoire of public, social, and legal resources by which state behaviour is understood, justified, and argued over. In other words, the ethical analysis of secret diplomacy must also pay attention to the level of *critical reflection* that actors demonstrate, or fail to do so, about the broader implications of secret diplomacy. To what extent, do they consider, for instance, that a

particular method of secret diplomacy may serve to undermine the authority of important “public” universals (e.g. *jus cogens* norms), or by contrast to legitimise new universals that may even turn diplomacy against itself in the form of anti-diplomacy.

These three statements allow us to make a well-judged appraisal on the overall normative value of secret diplomatic actions. First, no secret diplomatic engagement can be ethically justified if none of the three conditions is met. This is so because if actors cannot invoke relevant moral principles in support of their intended strategy, they fail to factually connect moral justifications to the context of the case, and they expose reflective casualness in assessing the broader implications of their actions for diplomatic conduct. Second, if the action enjoys normative relevance and factual grounding then a sufficient claim of normative appropriateness can be invoked in support of the respective action. While the consequences of the action may look detrimental to diplomacy in hindsight, the actors nevertheless deserve normative credit for drawing on relevant moral principles in favour of the action and for properly transposing them, through accurate factual descriptions, to the context of the case. Third, a strong ethical case in favour of secret diplomacy can be made if, in addition to the meeting the previous two conditions, parties demonstrate a good level of critical reflection regarding the broader consequences of secret diplomacy. The intended action is not only properly justified from a moral and factual viewpoint, but the likely negative implications for the general practice of diplomacy are being carefully assessed in view of the available information.

The secret diplomacy of extraordinary renditions: a case study

The secret diplomacy of the US extraordinary rendition programme will be used as a background case on account of three factors. First, the case involved highly controversial considerations regarding the benefits and limitations of resorting to secret diplomacy in support of a high-profile objective, national security. Second, secret extraordinary renditions were made possible by the close diplomatic collaboration between the United States and a wide range of actors in Europe, the Middle-East and Asia. Third, by directly challenging some important international conventions, the

secret diplomacy of extraordinary renditions (SDER) calls attention to the significance of its structurational impact.

The secret programme of extraordinary rendition operated by the Central Intelligence Agency (CIA) in the past decade, had its roots in the 1986 scheme of “rendition to justice” of the US government authorising the apprehension of suspected terrorists whose acts had traditionally been excluded from extradition arrangements (Satterthwaite 2008: 28–9). By late 1990s, it was further developed as an intelligence-gathering programme involving the transfer of foreign nationals suspected of involvement in terrorism to detention and interrogation in countries where US federal and international legal safeguards did not apply (ACLU 2005). Following the terrorist attacks on 11 September 2001, President Bush signed a classified Presidential Finding granting the CIA new competences relating to its covert actions, including the so-called “Kill, Capture or Detain” orders, or “K-C-D orders”, for high-value targets (HVT) (Council of Europe 2007: 15). The finding did not specify how captives should be handled during interrogation, but the Bush administration issued a pair of secret memos to the CIA in 2003 and 2004, which explicitly endorsed the agency’s use of “enhanced interrogation techniques” (Warrick 2008).

Technically speaking, SDER was an intelligence not a diplomatic operation, but the implementation of the programme required extensive diplomatic collaboration and coordination, at different levels, between the US administration and other governments around the world.³ For example, the CIA’s key operational aspects of the rendition programme were multilaterally developed with the European allies under the framework of the North Atlantic Treaty Organization (NATO) or through bilateral agreements (Council of Europe 2007: 18, 24). Article 5 of the North Atlantic Treaty became the legal-diplomatic platform on the basis of which a number of close US allies, including Italy, Germany, United Kingdom, Sweden, provided direct or indirect support for the apprehension and transport of HVT (European Parliament 2007).⁴ Bilateral agreements also proved successful in securing the support of several democracies in Eastern Europe, such as Poland, Romania and Lithuania, for hosting a number of secret facilities (a.k.a. “black sites”) between 2001 and 2005 (BBC 2009). Most importantly, information about the extraordinary rendition system was kept

secret from the public, being available only to a handful of officials in the United States as well as to the head of state and a few top intelligence officers in each host country (Priest 2005).

To begin with, the particulars of the post 9/11 environment (e.g. the public anxiety inspired by the possibility of new terrorist attacks on American soil, especially given the broader strategic context of the US military interventions in Iraq and Afghanistan) triggered, among US decision-makers, a search for moral universals applicable to the case. This search involved a collective recollection effort of similar encounters and experiences, underlying the first segment of the fact/value entanglement. The objective was not to debate in the abstract the value of competing normative justifications in support of SDER, but rather to identify broader moral considerations derived from socialisation and practical challenges that could best subsume the general factual descriptions of the existing situation. Indeed, a careful analysis of the political statements made by key US decision-makers involved in the coordination of SDER, reveals how their justifications eventually coalesced around two important sets of practical guidelines or “universals” (in Kornprobst’s parlance, see above), separated by slightly different degrees of *normative relevance*.

The first set of practical guidelines drew on the idea that secret and forcible abduction of foreigners for standing trial for their crimes was an evolving yet controversial legal practice. The tepid international opposition to the kidnapping of Adolph Eichmann by Israeli agents from Argentina in 1960, the capturing of Antonio Noriega by US troops in 1992, or the abduction and rendition of “Carlos the Jackal” from Sudan by the French in 1994 revealed an emergent pattern in international politics in favour of compulsory rendition of individuals involved in high crimes. As regards the legitimacy of the practice, the US Supreme Court held in 1992, echoing the century-old Ker-Frisbie doctrine, that the government could kidnap people from foreign countries to try them in the United States (Fisher 2008: 1415). In a similar fashion, the European Commission of Human Rights rejected “Carlos the Jackal’s” claim that his rendition from Sudan was unlawful (Miller 2009: 1244). In short, according to this line of reasoning, extraordinary rendition was not a violation of international law, but part of an evolving yet controversial customary legal norm, as repeatedly maintained by the US attorney general at the time, Alberto Gonzales (Smith

2005; Onikepe 2006). To be absolutely clear, the point about extraordinary rendition being an evolving customary legal norm is not discussed here from a legal perspective (e.g. whether this is legally accurate or not), but from an ethical perspective: whether the US decision-makers were normatively right to draw on this interpretation in light of previous experiences and public knowledge on the matter.

The second set of practical guidelines goes to the heart of the utilitarian claim regarding the effectiveness of the extraordinary rendition programme. As argued by the US secretary of state at the time, Condoleezza Rice, “renditions take terrorists out of action, and save lives” (Rice 2005). The callousness of the 9/11 attacks made the issue of effectiveness imperative in the eyes of US top-decision makers, even at the cost of crossing into the “dark side”. As vice-president Dick Cheney explained shortly after the attacks, the US response to terrorist attacks would have to undergo a radical transformation in comparison to the pre 9/11 context:

We’ll have to work sort of the dark side, if you will.... A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies – if we are going to be successful.

(Cited in Mayer 2009: 9–10)

It stands to reason that the removal of suspected terrorists “off the streets” may weaken terrorist organisations and thus prevent further terrorist acts, but SDER also involved a crucial element of coercive extraction of “actionable intelligence” from the detainees for the purpose of pre-empting terrorist plots.

The second rationale of the effectiveness universal had a much more controversial track record. For example, the CIA’s Phoenix programme, which allegedly combined brutal interrogations with extrajudicial executions during the Vietnam War, was subsequently seen as an intelligence-generating failure. The torture–terror counterinsurgency models refined in Vietnam were later exported, with ambiguous results, to Latin America through Project X, a secret training programme of army intelligence for police and militaries (Hajjar 2009: 324). Arguably, the second universal enjoyed much weaker normative relevance than the first, on

account of its less consistent track record. Again, the argument about effectiveness is discussed here not from an instrumental perspective (e.g. whether torture really works or not), but from an ethical perspective: whether parties were right to make such a claim in light of their previous experiences and public knowledge on the matter.

What is less clear, though, is the level of *factual grounding* of the two universals, that is, the second side of the fact/value entanglement. In other words, what we also need to establish is whether the transposition of the two universals to the particular situation of the suspected Al-Qaeda sympathisers makes a good case for the implementation of the extraordinary rendition programme through secret diplomacy. Rice's claim that the United States and other countries had used renditions for decades to transport terrorist suspects to countries where they could be questioned, held, or brought to justice (Rice 2005) was, for instance, technically in line with the prescriptions of the first universal, but rather in a misleading way. The two examples she mentioned, Ramzi Yousef and "Carlos the Jackal", referred to individuals who were brought to court to face public charges, trial and sentencing and not taken to secret interrogation centres, outside the judicial process, and subjected to torture (Fisher 2008: 1426). In addition, Rice ignored important recommendations of the State Department, which concluded in an internal memo in 2002 that the Bush administration's disregard of the Geneva Conventions was "untenable", "incorrect", and "confused" (Mayer 2005).⁵

The effectiveness of extracting actionable intelligence by means of "enhanced interrogations" was praised by the US vice-president, Dick Cheney, for keeping the nation safe (Cheney 2008), but strongly disputed by agents in the field. For example, a former FBI agent involved in the interrogation of HVTs testified in front of the US Senate Judiciary Committee that harsh methods of interrogation actually proved counter-productive in eliciting valuable information from the detainees (Hajjar 2009: 331). Others confirmed torture and lesser forms of physical coercion were effective in producing confessions, but these confessions were not necessarily true. Three of the Guantanamo detainees confessed, for example, that they had appeared in a blurry video, obtained by US investigators, which documented a group of acolytes meeting with Osama bin Laden in

Afghanistan. However, British officials subsequently presented evidence that the accused men had been living in England at the time the video was made. The detainees then told British authorities that they had been coerced into making false confessions (Mayer 2005).

By exposing a critical gap in the transposition of the two universals to the particulars involving the treatment of suspected terrorists, these examples seriously call into question the integrity of actors' moral reasoning. However, could SDER's legitimacy have been enhanced by the new contextual elements generated by the post 9/11 environment? The risk of new attacks, even biological or nuclear, was perceived as sufficiently credible at the time to justify radical actions. The campaign against Al-Qaeda was therefore seen not as a simple matter of law enforcement, but an international armed conflict governed by the laws of war (Yoo 2004: 1235). The possibility of new normative standards emerging out of the interplay between the selected moral universals and the particulars of the case that is, the SDER's structuration effect, thus brings up the issue of "critical reflection" as a measure of SDER's normative validity.

To what extent SDER has helped undermine, for instance, the authority of "public" universals that are critical for the practice of the diplomacy? On this account, the situation is rather mixed. On the one hand, the insistence of the US administration to extend the scope of extra-judicial prosecution raised serious ethical and legal questions, but mainly for the US judicial system (Aronofsky 2008: 596–7), rather than for the diplomatic method in general. On the other hand, the issue was considered sufficiently damaging for the US international reputation by President Obama, but despite his original promise to put an end to extra-judicial prosecutions, the matter has remained unresolved to the present day (*Guardian* 2011). While the Bush administration consistently defended its policy on extra-judicial prosecutions (Bush 2006), the Congress showed occasional signs of critical reflection on the matter. In a joint hearing held in April 2007, the Congressional Committee on Foreign Affairs acknowledged, for example, the potentially negative impact of SDER on transatlantic relations (House of Representatives 2007). However, the absence of stronger forms of critical reflection among US decision-makers on this matter cannot be considered seriously damaging for the SDER's normative value as the issue of extra-

judicial prosecution does not fundamentally challenge the general practice of diplomacy.

The use of torture, however, even in its “soft” version of “enhanced interrogation”, raises more substantial and damaging issues for the diplomatic practice. The prohibition of torture is presently considered a *jus cogens* norm from which no derogation is allowed, as argued in the 1999 Arrest Warrant case of General Pinochet (McCorquodale and Dixon 2003: 149). The restriction of the scope of the norm is possible, but only temporarily on grounds of *ratione personae* (International Court of Justice 2002). Rendition may also place countries on a diplomatic collusion course when matters of legal extra-territorial jurisdiction are involved. The diplomatic tensions triggered by the capturing of suspected terrorists in Italy and Germany by CIA agents without the consent of the local authorities distinctly reinforces this point (BBC 2007). The fact that US lawmakers raised no formal objections to the use of harsh interrogation methods during the 30 private briefings they received from the CIA at the height of the programme (Warrick and Eggen 2007), also denotes an unenviably low level of critical reflection on their part, which in turn casts a long shadow of doubt on SDER’s normative value.⁶

To conclude, the secret diplomacy of extraordinary renditions, as pursued by the United States between 2001 and 2006, faced major ethical limitations on all three dimensions. While the first universal was reasonably relevant for the case, the second universal offered a weak interpretative lens for SDER due to its inconsistent track record. The degree of factual grounding of the two universals was also problematic in light of the inaccurate interpretation of the legal aspects of the rendition programme and of the questionable effectiveness of the “enhanced interrogation” methods. Finally, US decision-makers showed a low level of critical reflection about the broader consequences of secret diplomacy, especially those involving the anti-torture *jus cogens* norm. SDER could have still enjoyed normative validity had it been limited only to the capture and rendition of suspected terrorists, in cooperation with local authorities, and in full compliance with the terms of the Geneva Convention against torture.

Conclusions

The aim of this chapter was to examine the conditions under which secret diplomacy could be considered normatively justifiable. To this end, I argued that despite its critical liability in reinforcing a self-fulfilling dynamic of distrust and insecurity, secret diplomacy still presents important advantages for the diplomatic process. Drawing on pragmatic theories of political and ethical judgement, I argued that a three dimensional contextual approach centred on actors' reasoning processes offers a sharp and reliable analytical tool for bridging the ethical gap of secret diplomacy. Using the case of the US extraordinary rendition programme, the chapter has shown empirically that secret diplomacy is ethically unjustifiable when actors fail to invoke normatively relevant principles of justification, inappropriately apply them to the context of the case and when the moral reasoning process suffers from deficient levels of critical reflection concerning the broader implications of the intended actions for diplomatic conduct.

Two areas of further investigation deserve special attention if the value-added to this approach is to be consolidated. First, the contextual model indirectly places an extra normative burden on the diplomats from democratic countries as they are expected to have been more extensively exposed and socialised into observing norms of democratic accountability and transparency. This suggests that, from a normative perspective, diplomats representing authoritarian regimes may have broader discretion in engaging in secret diplomacy on account of their limited repertoire of "democratic" universals. The third criteria – critical reflection – is supposed to correct this imbalance, but further work is needed to explain whether and how this correction may actually work.

Second, the scope of application of the contextual model of ethical analysis could be extended from the subject of secret diplomacy to other areas of "open" or "semi-open" diplomacy such as coercive diplomacy, environmental negotiations or UN preventative diplomacy. Theoretically, there is nothing inherent in the model to prevent such a development. By being derived from the actors' reasoning process as informed by their socialisation process and past experiences, all three dimensions of ethical analysis – normative relevance, factual grounding and critical reflection – are perfectly suitable for being applied as theoretical anchors for more extensive normative studies of diplomacy.

Notes

- 1 The chapter was previously published in the *Journal of Global Ethics* 10: 1 (2014): 85–100 (online, available at: www.tandfonline.com). Reproduced with permission of Taylor and Francis.
- 2 For example, if justifications of secret diplomacy are anchored in taken-for-granted understandings about advancing peace talks, such as those between the United States and North Vietnam (Kissinger 1994: 684) in early 1970s, one should also critically consider the extent to which Kissinger's secret diplomacy really helped put an end to the war as well as whether the context of the case really replicates the strategic environment during which the talks between the United States and North Vietnam occurred (e.g. the Cold War).
- 3 Due to space constraints, non-US justifications of the SDER programme cannot be included in this chapter. It is nevertheless important to note that it was the United States that approached and sought the collaboration of its allies and was also the one to coordinate logistically the entire operation.
- 4 According to former US officials, the CIA had flown 100 to 150 suspected terrorists between 2001 and 2005, from one foreign country to another, including to Egypt, Syria, Saudi Arabia, Jordan and Pakistan. Each of those countries has been identified by the State Department as habitually using torture in its prisons (Jehl and Johnston 2005).
- 5 For example, Rice's claim that the US policy on enhanced interrogation was consistent with US obligations under the Convention Against Torture, obscured that fact that "consistent with" was not the same as being in compliance. The former invites administrative choice and discretion instead of a legal obligation (Fisher 2008: 1428).
- 6 Harsh interrogation methods were partially banned by the US Congress through the Detainee Treatment Act in December 2005 and more comprehensively, through the intelligence funding bill in March 2008, the last being subsequently vetoed by President Bush (Associated Press 2008). This demonstrated greater awareness among US lawmakers about the negative impact of torture on the US standing in the world. However, both legislative acts were adopted at the end of the extra- rendition programme and largely as a result of the media exposure of SDER.

Part III

Cases of secret diplomacy

8 Gripengate

When the worlds of secret and public diplomacy collide

James Pamment

Introduction

Secret diplomacy may at first glance appear to be the antinomy of public diplomacy. Diplomats have traditionally been discouraged from participation in the domestic or foreign politics of the state in which they exercise their functions, and their official communications are, according to Articles 12 and 13 of the Havana Convention (1928), to be channelled through the host Foreign Ministry. By consequence, diplomatic studies scholars have tended to view public diplomacy as “foreign propaganda conducted or orchestrated by diplomats”, an activity that is manifestly “not diplomacy” (Berridge 2002: 17 and 125). Since the 1990s, however, scholars have observed the impact of new communication technologies on diplomatic conduct, and the necessity of multiple stakeholders from across and outside of government being able to share in the co-creation and co-delivery of policy. Thus, diplomacy is now seen as an integrated field, drawing upon a range of techniques and strategies including public diplomacy (Sofer 1998; Hocking 2006; Kelley 2010).

Wolf and Rosen (2004: 4) define the difference between public diplomacy and traditional diplomacy in terms of levels of transparency. They argue that “public diplomacy is *transparent* and widely disseminated, whereas official diplomacy is (apart from occasional leaks) *opaque*”. However, contemporary research would suggest that diplomacy and public diplomacy are more

tightly integrated than this polarised definition might suggest (Hocking *et al.* 2012; Pamment 2015). For example, secrecy may be desired when planning a campaign to influence public opinion in support of policy objectives, and efforts to sway senior government figures in the course of traditional diplomacy may be subject to strategic communication in the public domain. Unclassified memos can be the object of freedom of information requests, thus making informal internal deliberations subject to public scrutiny, and social media may be used to deliver updates to the general public from within ongoing negotiations. With diplomatic practice taking a resolutely public and digital turn, any simplistic separation between concepts holds little sway.

However, the traditional charges of foreign meddling and propaganda demonstrate an uneasy tension between the covenants of the Havana Convention and contemporary diplomatic practice. In this chapter, I argue that public diplomacy adds new dimensions to the question of the “dirty hand”; the classic thought experiment assessing whether the choice of secrecy, though ethically disagreeable, can be the lesser of two evils (Bjola 2013). This chapter considers the “dirty hand” through the example of a complex arms deal between Sweden and Switzerland for which ongoing, secret negotiations were essential to the stability of the deal. Yet, the secret negotiations were at constant threat of leaks and media exposés, and the deal itself was augmented by significant efforts to influence public and elite opinion through media, culture, training and events. These tensions culminated in the leak of eight secret telegrams between the Swedish ambassador to Bern and Swedish Foreign Ministry, which created a scandal significant enough to bring the \$3.5 billion (USD) deal to an unsuccessful resolution.

Using this case study I argue that, contrary to the traditional view of the inviolability of discreet government-to-government diplomacy, a strategically-managed public profile is part of the normal conduct of diplomatic agreements. Secrecy and publicity are never far apart. This encourages the theorisation of secret diplomacy as a temporary, privileged space in which the discipline of hierarchical political structures is continually tested against the agency of individual actors with their specific interests and constituencies. The potentially disruptive weight of public scrutiny is always at hand, as a strategic resource for participants in the

secret negotiations. Thus, secrecy and publicity appear more as complementary choices in a strategic toolset, rather than entirely distinct concepts or polar opposites.

In this chapter, I make four assertions about the nature of the relationship between secret and public diplomacy. First, I argue that secrecy minimises the cost of deliberation, including minor, and sometimes even major shifts in an actor's position. Secrecy provides a space in which persuasion can take place, initially at least, with minimal political cost to those parties. Second, I argue that these moments of secrecy are nonetheless privileged and temporary, and that the decision to utilise secrecy is subject to a trade-off between cost and benefits. Thus, in some cases the ability to reach agreements in private has a lower cost than the embarrassment of an actor conducting an about-turn in the press, an actor significantly outperforming others during the negotiations, or a protracted public debate that damages the reputation of all parties. In others, however, the cost of leaks from dissatisfied parties, or of appearing to have utilised secret diplomacy irresponsibly or in an underhand manner, would appear greater than the benefits.

Third, I argue that the conduct of secrecy is subject to the tension between the *discipline* enforced by the organisations involved in negotiations, and the ability of those representing those organisational interests to assert themselves as *actors* with their own interlinked but distinct interests. Secrecy requires trust within and across parties. Yet, some actors see benefits from asserting their own interests in the public domain, by acting as individuals or on behalf of a particular lobby or constituency. It would appear that secret diplomacy is less reliable in instances of multiple players with complex interests, such as in this case study. The ability of organisations to assert hierarchical discipline upon actors plays a clear role in the ability to minimise deviations from the party line.

Finally, I argue that secret and public diplomacy are not polar opposites, but should be seen as complementary techniques in the diplomatic toolset. The decision to use public discourse to manage, publicise, leak, promote, influence or deceive stakeholders is an active one, well-integrated into the practice of secret diplomacy. Secret negotiations can be framed in the media and conducted in the public eye, and public diplomacy campaigns can be enacted covertly. Thus, the interaction between the two reveals much about

the complex, integrated nature of contemporary diplomatic techniques. With these assertions in mind, this chapter explores the complex worlds of secret and public diplomacy, and their awkward meeting in what became known as “Gripengate”: the failed attempt to sell 22 JAS-Gripen 39 E/F fighter aircraft to armasuisse.

Gripengate: an overview

Despite its reputation for neutrality and non-participation in the major wars of the twentieth century, Sweden is the twelfth largest national exporter of arms, accounting for around 2 per cent of the world’s arms exports (SIPRI 2013a). In 2012, 61 countries imported weapons from Sweden at a value of \$1.5 billion (USD), a figure down by 30 per cent from 2011 (Utrikesdepartementet 2013: 4–5; SIPRI 2013b). In fact, Sweden generates the highest income per capita of global weapon sales, and it is believed that around 60 per cent of sales wind up in non-democratic countries despite strict ethical guidelines. A major contributing factor to its arms industry rests in the neutrality agenda, on the basis that Sweden should be able to defend itself through its own means. Although a relatively minor player in global terms, each Swedish citizen benefits more from arms exports than the citizens of all other countries, and the arms industry represents an important part of the make-up of Swedish national identity (Ek and Lindahl 2012).

JAS-Gripen’s manufacturer Saab is the thirty-second largest arms producing company in the world, with sales of \$2.9 billion (USD) in 2012 (SIPRI 2014a). The JAS-Gripen fighter aircraft has been in development since 1982 and endured a number of scandals during its extended lifetime, including cost overruns, two crashes, polarised political support, accusations of media manipulation, leaked inquiries and reports, and major bribery charges (Brändström 2003: 16–18; Ekman 2007; Leigh and Evans 2010). There are believed to be 186 of the aircraft in operation, with 26 purchased by South Africa and 12 by Thailand, and the Swedish air force owning the remainder. The Czech Republic and Hungary currently lease a small number of JAS-Gripens from the Swedish air force (SIPRI 2014b). Ongoing negotiations with Brazil, Denmark, the Netherlands and Switzerland recently led Saab’s CEO to raise expectations from 300 unit sales over the lifetime of the aircraft to 400–50 (Sundberg 2013). Since the Swedish

taxpayer is so heavily invested in the research, construction and ownership of the aircraft, foreign sales are an essential means of bringing those unit costs down.

The sale of Gripen to Switzerland was a controversial story. Beginning in January 2008, the competition to replace Switzerland's 54-plane F-5 fleet was a tense battle between Saab's JAS-Gripen, the Eurofighter Typhoon, the French Rafale, and the Boeing F/A-18 Super Hornet. The competition involved scandals such as leaked evaluation reports, accusations of manipulated test results, claims of industrial espionage, and postponements; all of which place the leaked embassy telegrams in the context of the murky world of multi-billion dollar arms sales. In December 2011, the Swiss government approved the procurement of JAS-Gripen over its French, Anglo-German and American competitors. In 2012, with the deal agreed but the other participants continuing to make counter-offers outside of regular channels, the Swedish government stepped in as guarantor, making the countries partners in Gripen's long-term development and upgrade.¹ Following this long, drawn-out process, ratification of the bill was anticipated to be a formality.

In March 2013, the Swiss parliament's Small Chamber narrowly approved the deal without, however, receiving sufficient votes to release funds for the purchase. Aware that the question of funding would be raised at parliament again later that year, Swedish ambassador to Switzerland Per Thöresson worked behind the scenes to build support among Swiss politicians, creating lists of "friends" and "opponents", smoothing over conflicts, renegotiating clauses and repayment schemes, activating intermediaries, and circulating privileged information. A successful vote in the security sub-committee meant that, in late September 2013, both chambers of the Swiss parliament voted in favour of the purchase of 22 JAS-Gripens at a cost of \$3.5 billion (USD). On 15 January 2014, in line with domestic policies governing public participation in major national decisions, the Swiss Federal Council formerly announced a referendum for 18 May 2014 on the establishment of the Gripen Fund Act.

A week later, the news broke that Saab had paid \$225,000 (USD) into a fund to support the "yes" campaign. Although perfectly legal, the backlash from both sides of the campaign was sufficient for the money to be returned

and for Saab to announce that it would reduce its profile in the run-in to the referendum. Swiss defence minister Ueli Maurer was forced to field questions about financing at the press conference announcing the formal start of the “yes” campaign in early February, and declared, “we came to the conclusion that this can’t happen, that it would be considered inappropriate interference in the campaign” (Davos TT 2014; Augustsson 2014; Alling 2014).

On 12 February, four secret telegrams sent under the authority of Thöresson to a range of ministers and foreign and defence departments in Stockholm were released by Swedish Radio, apparently having been leaked to Radioleaks, a WikiLeaks-inspired service for whistle-blowers maintained by the public service broadcaster (Sveriges Radio 2012). The telegrams consist of candid policy analysis and strategy, information gleaned from private discussions with key figures in the Swiss government and military, minutes from meetings, and a draft list of activities in support of the “yes” campaign planned by the embassy, military and Saab (together termed “Sweden, Inc.” by Thöresson). Following on from the Saab funding scandal, the suggestion that Sweden was trying to influence Swiss voters created uproar.

Swedish foreign minister Carl Bildt claimed that although he wasn’t aware of the activities, it was “natural and obvious” that the Swedish Embassy would offer its support to the deal, and that “it would have been weird if they hadn’t”. Thöresson suggested that the activities related to the everyday work of an embassy: “this isn’t a list to influence public opinion, it’s a list of events we’ve planned” (Gagliano and Garcia 2014a, 2014b). Despite the best efforts of Swedish Radio and some Swedish newspapers to keep the domestic political scandal alive, it petered out within a few days. This was largely on the basis that the detail of the telegrams revealed very few scandalous suggestions beyond the overall principle that it was in Sweden’s interests for the deal to go ahead. However, shortly afterwards, four additional telegrams covering the earlier parliamentary debates were released, which reveal further details of Sweden’s secret diplomacy during the bill’s consideration by parliament.

The fallout in Switzerland was more serious, as Thöresson was forced to apologise for a number of unguarded remarks about individuals on both sides of the campaign. These included the description of three Swiss

politicians on the “no” side as “not particularly distinguished”, along with the less than complimentary description of a leading voice in the “yes” campaign as “lacks charisma but is a woman, which is good” (Thöresson 2013e, 2013f). Defence Minister Maurer, an important ally of the Swedes, was criticised for weak – and at times offensive – performances during efforts to earn the support of parliamentarians. Swiss tabloid Blick ran with the front page headline, “Sweden insults Switzerland”, and printed details of Thöresson’s grovelling apologies to those concerned, along with a repudiation of the claim that the Christlichdemokratische Volkspartei (CVP) took the lead in the campaign purely for financial reasons (Studer 2014). The CVP subsequently resigned from leadership of the “yes” campaign, citing continuing uncertainties with regard to who was funding the campaign as well as a lack of clarity over Sweden’s and Saab’s roles within it: “For CVP Schweiz it is clear: the referendum campaign must be conducted in Switzerland – with its own resources and arguments. This demands no interference by foreign actors” (CVP Schweiz 2014).

In May 2014, the referendum returned a narrow “no” vote of 53.4 per cent to 46.6 per cent. This was the first time a major public vote on defence had been unsuccessful, and Maurer came under criticism for alienating right wing and French-speaking voters on what should have been a winnable proposition. In particular, it was noted that the leaked telegrams revealed Maurer to be following Saab’s lead, which was not well-received among patriotic and nationalist supporters of the military (Lewenhagen 2014). Furthermore, there can be little doubt that the revelations about Swedish influence weakened the “yes” vote, even though there were relatively few damaging revelations. Rather, it would appear that the intention to influence Swiss politics gave the impression that there was a “dirty hand” at work, something that raises important questions about the practical and theoretical relationship between secret and public diplomacy.

The plan to influence parliament

Although the Small Chamber’s decision to approve the Gripen purchase on 5 May 2013 signalled an expected victory for the Swiss defence lobby, the associated financial plan failed by one vote. This was considered a “wake-up call” for the right-wing parties who supported the purchase, and came to the

surprise of opponents, supporters and the media. Thöresson's telegram to Stockholm following the vote revealed a degree of disappointment from the Swedish side, both with discipline within the Swiss political parties (two Gripen supporters had apparently failed to turn up), and a "nonchalant" performance by Maurer during a key meeting, which was attributed to dissuading two additional supporters from voting positively (Thöresson 2013a). Though merely a hiccup in the process of ratifying the deal, the problems belong in the context of a complex procurement process that began in 2008 and had gone anything but smoothly.

The main diplomatic activities supporting the bill were standard tasks of monitoring, advocating and negotiating (Neumann 2013). The Swedish embassy maintained lists of key players and their opinions, attempted to persuade politicians of the merits of the purchase both directly and through other actors, and facilitated the renegotiation of parts of the contract to satisfy different players. Thöresson was also beginning to prepare for the next step once parliament approved the deal, which would be a national referendum over funding. He argued, "work needs to begin now to ensure financing and the participation of important actors". Estimating the campaign to cost 4–6 million Swiss francs, he noted that "Saab can/should/must not contribute". Furthermore, he argued that the campaign should involve Swiss industry representatives, "so that it is not only pilots and officers out campaigning" (Thöresson 2013a). Thus, the traditional secret diplomacy needed to push the bill through the Swiss parliament would require public diplomacy to become law. This makes this case study highly salient for analysing the relationship between secret and public diplomacy.

Following the failed vote, the bill was handled by the National Security Council Committee (SiK/N), which was given the task of analysing the financial plan and determining whether it should go back to parliament later that summer. Thöresson responded by supplying Deputy Secretary General Catrina with a list of members of the SiK/N, "including what we know about where they stand". Maurer also agreed to, "personally and via the right-wing party leaders, court those we consider critical to winning the vote in SiK/N" (Thöresson 2013a). Thöresson was confident: "we have a pretty good idea of where the 25 SiK/N members stand" (2013b). With his analysis suggesting 11 votes for, 11 against and three unsure, much of the lobbying of decision-makers rested on the details of the payment plan and penalty clauses, and

involved ensuring that the specific requests of individual parties were reflected in the contract. The ambassador was clear on the three members “critical” to the success of the bill, and assured Stockholm that “each will now be lobbied by favourably-inclined industry representatives from their respective cantons and by party colleagues” (Thöresson 2013c).

Part of the secret diplomacy techniques therefore involved working through intermediaries to control flows of information. In terms of the “dirty hand” problem, these activities reveal the value of secret diplomacy in providing a discreet space for multistakeholder negotiations. The ability to work out of the public view enabled the players to reach solutions that minimised the political costs to the parties involved. For example, over lunch with a politician who was considering changing his vote from no to yes, Thöresson reported: “together, we went through the arguments he could use to explain his change in attitude (!)” (Thöresson 2013d). At another such meeting, Thöresson recounted:

The condition from my side was that nothing may be divulged about the contents of the contract, and also that we reach agreement on a “line to take” that Müller can use to explain why FDP now (in the best-case scenario) stands behind the contract and the procurement. After all, he must be able to save face.

(Thöresson 2013c)

These actions may be characterised by tensions between *discipline* – in terms of party loyalty and the party line – and *agency* in terms of the ability to force concessions from other players by threatening to deviate from the party line. The secret space provided the flexibility for both discipline and agency, in a manner that avoided excessive political costs, or that could kill the entire venture. Maurer was considered “appreciative” of Swedish efforts to be flexible in the negotiations, “and happy to receive suggestions about which parliamentarians should be worked upon and how, etc.” (Thöresson 2013b). Secret diplomacy enabled monitoring, advocacy and negotiation to take place at a minimal cost to stakeholder relationships, thus suggesting that the “dirty hand” was the lesser evil when compared to a full public debate over minor details that would cumulatively damage public perceptions of the deal before it could ever be signed.

Nonetheless, the sense of threat to this private space – eventually shattered by the release of these telegrams – was tangible even at this stage. Indeed, the secret space should be considered a temporary space subject to the continual risk of exposure. The notion that secret diplomacy carries a political and even moral cost was certainly a salient factor for the embassy. The eventual leak of these telegrams demonstrates that the cost was something the participants were willing to pay in order to close the deal. Thöresson noted that he had received an advance copy of the document that set the agenda for SiK/N's decision, but that "the risk is that the document will leak to the media, in which case I recommend that we lie low" (Thöresson 2013c). Later that month, when the successful vote was all but assured, he added, "The biggest risk now is that there will be a new 'revelation' in one of the big Sunday papers" (Thöresson 2013d). It is therefore clear that the space for secret diplomacy was highly valued by those who used it, and that it was in many respects considered a privilege rather than an expectation, with anticipated costs as well as benefits.

The plan to influence the people

Parliament passed the bill in September 2014, and attention immediately shifted to the referendum. The terms for Swedish participation in the referendum were clearly outlined by Thöresson: "For the Swedish side it's about abstaining from the actual Gripen campaign, but there is significant demand for concrete evidence of partnership between our countries" (Thöresson 2013e). He notes that Maurer was "very clear" in asserting that "in the campaign itself, we are not welcome. It has to be run – and won – by the Swiss" (Thöresson 2013e). However, Maurer also wanted "as much support as possible from Sweden up until the referendum ... in the shape of 'positive events' connected to Sweden, the partnership and to Gripen" (Thöresson 2013f).

Thöresson appears to have interpreted this in terms of creating a public diplomacy campaign, for which Sweden would supply "information materials and arguments, and also training" to the "yes" campaigners, as well as take advantage of opportunities to boost Sweden's profile (Thöresson 2013f). Consequently, he undertook to ensure that "this embassy will

completely re-draft its business plan in order to reach the biggest possible impact towards the middle of May” (Thöresson 2013e). Thöresson reasoned:

the more that Sweden can demonstrate and concretize the strategic partnership, and the more positive headlines we can get about Sweden, the better. Visits by journalists to Sweden, large Sweden-events and collaborative activities like for example Swedish and Swiss relay teams in the Vasa cross-country ski race etc. [Maurer:] “It would be a delight!” He also wants Gripen to be visible in Switzerland, “preferably every 6–8 weeks” (!), for example in connection to large public events.

(Thöresson 2013e)

The public diplomacy plan took the form of a draft schedule of “peripheral activities” attributed to “Sweden, Inc.” (Thöresson 2013e). The first version of the schedule was agreed between Thöresson, Defence Attaché Petersson and Saab, and had “received the blessing” of Maurer and Ambassador Catrina of the Federal Department of Defence, Civil Protection and Sport (DDPS). It consisted of 31 activities between November 2013 and May 2014, with the caveat, “We will not be able to do everything, but hopefully as much as possible – considering how uncertain the result of the referendum is, our contributions could very well tip the scale” (Thöresson 2013f). A second draft list featuring 27 activities was produced following a meeting between the main Swedish and Swiss actors, during which it was agreed that certain activities be removed (Thöresson 2013f). The second list will be considered here as it is the most representative of actual activities; the most significant cancelled activities related to Gripen aerial displays at public events.

The first point to be noted about the public diplomacy campaign, therefore, is the secret diplomacy behind its planning. Much of the literature on public diplomacy considers collaboration to be the “best” form of engagement between nations, since it promotes common objectives and mutuality (e.g. Signitzer and Coombs 1992; Zaharna *et al.* 2013). However, such normative assumptions ignore the role of secretive diplomacy in establishing partnerships, such as in the case of Gripen. Here, a genuine partnership based around political, military and industrial cooperation was used as collateral to achieve a desired outcome. The campaign aimed at representing the partnership to the electorate in a manner that would

influence a positive vote. Strategic decisions about how the partnership should be conducted and represented were taken in secret, as part of a continuing secret (but leaky) process of supporting a deal. The “dirty hand” was thus at work even in the collaborative public campaign.

The majority of the events involved a visit of some kind, whether by ministers, diplomats, senior civil servants, business leaders, senior military, royalty, or the pilots themselves. Considering that the majority of events took place during a five-month period, it is quite remarkable how many opportunities the embassy found for Swedish dignitaries to make visits to Switzerland. Headlining visitors included Crown Princess Victoria, foreign minister Carl Bildt, minister for enterprise and energy Annie Lööf, Saab co-owner Jacob Wallenberg, in addition to a request to squeeze in a visit by defence minister Karin Enström.² More than half of the events involved “piggybacking” on an existing conference of some kind, such as business fora, seminars, exhibitions and fairs. In fact, only seven of the activities can be exclusively attributed to the Gripen plan, and these were mostly bilateral military meetings and training programmes.

The training programmes are probably the most controversial part of the plan. At the request and expense of Saab, between 40 and 60 “yes” campaigners would be trained in Sweden, with some limited support from the Swedish air force. However, the Swiss were keen to observe that no active officers would be involved, and that the training session was entirely unofficial. This is one of the more damaging examples of the “dirty hand” at work, but it only really represents Saab’s desire to train campaigners in the virtues of the product they were campaigning for. Again, training and capacity building exercises are typically considered some of the best forms of collaborative public diplomacy, yet in this case they took place under condition of discretion, since they potentially revealed the corporate influence of Saab over the referendum.

In similar events, Swiss journalists were invited to Saab’s headquarters and to a Swedish airbase with the aim of generating positive television coverage. Marketing of the Gripen involved “mock-up” versions of the aircraft exhibited at two major expos, which would together receive over 500,000 visitors. In March, during a nine-day period, Gripen would be visible in public activities, along with pilot “conversion training” and a static “meet

the Gripen” event. The period would culminate in a flying display in conjunction with the alpine world cup final in Lenzerheide, although this was cancelled shortly before amid accusations of attempting to influence public opinion. These March events emphasised the strategic partnership between the two countries, and were arranged at the invitation – and expense – of the Swiss air force. Some of the most controversial activities were therefore little more than marketing opportunities conducted with the blessing of the Swiss political and military leadership.

In addition to the above, around a third of the activities intended to use culture as an opportunity to pursue the Gripen agenda in the media. These included traditional Lucia receptions and Christmas dinners for politicians, diplomats, journalists, military and business leaders at the ambassador’s residence, Maurer participating in the famous Vasa cross-country ski race in Sweden, and most importantly a six-week long *Schweden Wochen* that included a Sweden Party, a Nordic Summer event, the rock festival “Sounds Nordic, Sounds Good!”, a Swedish Light and Design exhibition, and a Volvo Art Session. These events are part of an annual tradition of Sweden Weeks in Switzerland dating back to the launch of Brand Sweden in 2007, and their contents do not appear to have been influenced in any way by the Gripen plan. Rather, they demonstrate the value of Brand Sweden as a low-cost resource for diplomatic and commercial actors to draw upon in public diplomacy campaigns (Pamment 2013). In fact, the associated media aspects of the activities appear rather hastily assembled, often highlighting the opportunity to give an interview or place an article but with very few specifics. It should be noted in this context that the embassy in Bern covers Switzerland and Luxembourg and has just four diplomatic staff including the ambassador and defence attaché.

The embassy intended to play to the strengths of Sweden’s brand identity, utilising limited resources in a complex policy environment consisting of many actors with their own agendas. Thöresson’s main tasks were facilitative in nature. The public diplomacy campaign rested in large part upon Sweden’s pre-existing cultural and business presence in Switzerland, and on the willingness of Saab along with Swiss and Swedish military and political actors to fund – and accept funding – for training exercises. The embassy’s efforts to turn such events into media opportunities were hardly wage-ranging, and tended to be placeholders in the draft list under

bullet points such as “Media?” – far from a sophisticated media plan, public diplomacy in this case study may be characterised by efforts simply to take stock of what assets and resources were available for promotional purposes. All of this adds to the conclusion that the Swedish image campaign was far less sophisticated than many of the scandalous headlines made it appear. The fact that this was revealed to be a “secret” plan was the damaging part, as the Tribune de Genève notes:

Sweden with its inventions, its gastronomy, its royal family, its mountable furniture and its Pippi Longstocking – it’s through these postcard clichés that Sweden’s Ambassador in Bern counted on capturing Swiss hearts, or in other words [thought he could] get us to spend three billion [Swiss Francs] on 22 combat aircraft.

(Cited in von Hall 2014)

Thus, the implication of the “dirty hand” undermined a strong cultural and political partnership that existed independently of any arms sales. By using these elements instrumentally, the “dirty hand” was thrust into the spotlight, and the cost of secrecy demonstrably outweighed the benefits of maintaining a discrete deliberative space.

Secrecy, publicity and partnership

The characterisation of the Swedish activities as a “partnership” with the Swiss is entirely supported by the evidence. However, it should be noted that the term partnership was actually used in two distinct ways by the Swiss, even though Thöresson’s analysis does not make such a distinction. First, it was used in the sense of finding joint opportunities to present a positive image of Sweden through public diplomacy, and this appears to be the preferred interpretation by the Swedish side. Second, it was used in terms of a strategic partnership centred on industrial cooperation, which seems to have been the preferred interpretation by the Swiss. On the second point, the October telegram briefly mentions the importance of Saab coming as far as possible with its “industrial cooperation”. The initial Framework Agreement signed by the two countries included the “prerequisite” that the deal would include an offset agreement,³ but the details were still to be hammered out

(Gripen Framework Agreement 2012: 2). Within a week of the telegram, Saab made an announcement undertaking to invest a minimum of 100 per cent of the Gripen contract value back into Switzerland, thereby clarifying the scope of the offset agreement (Kleja 2013; Thöresson 2013e).

By mid-December, it became clear that the Swiss interpretation of “partnership” hinged on precisely how heavily Saab intended to reinvest Gripen funding back into Swiss industry. As the “yes” campaign took shape, it appears that Maurer’s advisers were attempting to leverage the uncertain situation to earn further concessions from Saab. This was attributed by Thöresson to the influence of Swiss maintenance, repair and overhaul (MRO) supplier RUAG, who would be among the recipients of such contracts (Thöresson 2013g). An emergency meeting was arranged between the key players for 20 January, but the minutes were not among the documents released into the public domain. However, Thöresson’s claim that a public diplomacy-related meeting in December “was a very necessary meeting – though mainly to coordinate the Swiss side (!)” should be placed in the context of parallel efforts by the Swiss to establish concrete figures “in cash” of MRO contracts to be placed in Switzerland (Thöresson 2013g). In other words, while Thöresson was trying to coordinate a public diplomacy plan with limited resources at the request of the Swiss, Swiss actors appear to have been leveraging uncertainty in the underlying arguments and activities to negotiate better terms on the deal for their own constituencies.

A similar *modus operandi* appears in relation to the “yes” campaign’s funding. Thöresson raises the issue suggestively on a number of occasions in the first telegram, before concluding somewhat cryptically, “Intensive discussions about this rather sensitive issue are being held as we speak among the parties most concerned” (Thöresson 2013e). He also refers to a campaign fundraiser and in-fighting between right-wing parties over resources, with the issue remaining unresolved until the January telegram, and few details of the final resolution offered (Thöresson 2013f, 2013g, 2014). Given the subsequent revelations regarding Saab’s role in providing funding to the “yes” campaign, Thöresson’s discretion was well-placed. However, it seems reasonable to suggest that some of the Swiss actors, such as the CVP, were playing on Swedish anxiety to draw additional funds from Saab. Together, these two examples seem to suggest that, under the aegis of firming up the public diplomacy arguments and boosting Sweden’s image in

the partnership, Swiss actors were breaking from party discipline to further their constituencies' interests.

Therefore, it may be argued that the public diplomacy campaign acted as a pretext for continuing the secret diplomacy. While Saab's "dirty hand" was eventually revealed, the need to represent a strong partnership publically was paralleled by secret negotiations over the financial components of the partnership. In other words, "public" diplomacy and "secret" diplomacy fed into one another, with neither remaining exclusively in its privileged domain. On the contrary, secret negotiations gave formal shape to the partnership through concrete examples of economic reinvestment, while efforts to promote Swedish influence relied in part on secret funding and the conclusion of secret deals. If secret diplomacy relies upon a temporary and costly space for deliberation, public diplomacy acts as the strategic representation of that space; no less privileged, and of no less utility to those seeking to monitor, advocate and negotiate their positions.

The claims of foreign manipulation of national debates, derived from the Havana Convention, are clearly of importance here. Many of the claims seem to be grounded in the divisive pro-and anti-military politics of both countries rather than in any actual activities. The most questionable public diplomacy activities relate to Saab paying for training and for the production of supporting materials for the "yes" campaign. It should be noted that some of the Swiss actors were content with Saab assuming a greater burden of these costs, and hence much of the outrage from parts of the "yes" campaign seems intended to divert attention from their own complicity in the funding arrangements. However, there is an interesting question of ethics that is answered, in part at least, by the tabloid outrage at what appears to be a foreign corporation and country intervening in their domestic politics. Actors on both sides were willing to behave in one way in secret, but felt unable to publically reveal the funding arrangements. Thus, the collapse of the deal was closely bound to the incongruence between secret and public spaces. The Swiss electorate was entirely justified in mistrusting the "dirty hand", and the leakers could justify their actions as whistle-blowers.

Furthermore, the fact that Thöresson's public diplomacy telegrams were classified "secret" enabled the presentation of their leaked contents as "a secret plan". These telegrams, based on their content, did not need to be

classified higher than “confidential”. The vast majority of activities were not at the initiative of the embassy and were happening regardless of the Gripen referendum. In the end, the secrecy around the activities *was* the story. If Thöresson felt uncomfortable attributing any of the activities to Swedish actors, it is because the privilege of the discrete space for negotiations was being exploited. Greater transparency, for example in the form of a short factsheet posted to the website detailing the embassy’s support of the “yes” campaign, would have been a far better route for a country promoting itself as “open Sweden”. This translates into a more general lesson about the relationship between public diplomacy and conducting diplomacy in public. The cost/benefit ratio for the “dirty hand” would appear to be directly correlated to the behaviour of those enjoying the temporary privilege of a secure space for diplomacy.

Conclusion

The “dirty hand” thesis is highly relevant for considering the cost/benefit ratio to secretive behaviour. However, it is important to consider the space for secret diplomacy as something temporary and at constant risk; in other words – and in distinction to diplomacy’s historical traditions – secrecy may not be considered a normal or permanent state of affairs. Public diplomacy, as the extension of everyday diplomatic behaviour through more actors and more complex forms of representation, has become the norm (Pamment 2014). Secrecy in multistakeholder negotiations may be characterised by its tensions between hierarchical discipline and the agency of those pursuing their own particular interests. It enables the resolution of these tensions through discrete negotiation, but the costs of maintaining a secretive space can be disproportionately high, since leaks and other forms of public discourse are in themselves negotiation tactics.

Despite being positioned in opposition to secrecy, public diplomacy is undermined when it is formulated as a secret plan to shape opinion. Attempts to bring discipline to an image as complex as that of a nation are subject to scandal, particularly when any secret activities that challenge the proposed image are brought to light. In the age of WikiLeaks and Snowden, of freedom of information acts, and amid the necessity of working with nongovernmental actors in multilateral negotiations, the secret space for

deliberation is unstable and leaky, and any communications within or between diplomatic organisations can inadvertently clash with their carefully maintained public profiles. Secrecy plays an essential role in securing diplomatic outcomes, but it is a temporary, privileged, and potentially costly technique to be wielded deliberately and carefully. For actors who maintain strong reputations for transparency and high levels of public participation in their governance – such as Switzerland and Sweden – the collision of worlds can be costly indeed.

Notes

- 1 For an overview, see *Defense Industry Daily*, online, available at: www.defenseindustrydaily.com/switzerland-replacing-its-f-5s-04624/
- 2 A number of senior ministers attended the World Economic Forum in Davos for reasons unconnected to the Gripen sales.
- 3 Offset agreements refer to the ways in which the costs of major arms purchases are offset by signing contracts with suppliers in the purchasing country.

9 Public manifestations of backchannel diplomacy

The case of the 2013 Iranian Nuclear Agreement

David Wong De-Wei

Introduction

On 24 November 2013, the Geneva Joint Plan of Action (JPA) was signed between Iran and the P5 + 1, the first international agreement between the United States and Iran in over three decades. On the surface, the negotiations proceeded relatively smoothly, with the interlocutors arriving at a deal after just three rounds of dialogue. Within hours of the deal announcement however, the *Associated Press* revealed that the United States and Iran had been involved in backchannel negotiations, having secretly met approximately five times since March 2013 (Klapper *et al.* 2013a).

In spite of its marginal position in the wider study of foreign policy and diplomacy, backchannel diplomacy remains an important tool tapped on by states, particularly between adversarial states attempting to normalise/mend relations. Historical examples include efforts to normalise Sino-US relations in the 1970s, and between the UK and Northern Irish political parties in the late 1990s. More contemporary case studies include efforts to break the deadlocked nuclear negotiations between United States and Iran, and the normalisation of relations between the United States and Cuba through Vatican backchannelling.

The concept of backchannel diplomacy is conventionally understood as diplomatic activity (such as negotiations or meetings between heads of states) that is deliberately concealed from public attention, and is at times

referred to as secret or clandestine diplomacy. Two parts of diplomatic activity may be concealed: the process and knowledge of the activity, and the eventual outcome and agreement arising from that activity. In the pre-First World War era characterised by “old diplomacy”, secret diplomacy was the norm, and both process and outcome were concealed (Leguey-Feilleux 2009; Nicolson 1977). However, with the advent of the two world wars, and the growing demands for democratic accountability over foreign policy, contemporary backchannel diplomacy often only conceals the process of negotiation and may at times parallel public negotiations (Pruitt 2008). This partial concealment potentially opens contemporary backchannel diplomacy to domestic pressures, since the eventual agreement is often subject to public scrutiny. The implications of this partial concealment will be the focus of this chapter.

Existing literature on backchannel diplomacy assumes that it is secret. However, research arising from constructivist thought on the importance of discourses for legitimising action, and the domestic dynamics of foreign policy, raises important questions about whether backchannel diplomacy could encompass a public dimension. If foreign policy is constrained by domestic public opinion, and discursive strategies are vital for legitimising policy change, it is not far-fetched to expect this same dynamic playing out in backchannel diplomacy – that actors will engage in public, but tacit, discursive strategies to “prepare the ground” during the backchannelling period for the eventual policy revelation, particularly if it occurs between adversarial states.

In this chapter, I explore the question of whether the conduct of backchannel diplomacy encompasses a public dimension. If so, what are the theoretical foundations for expecting this, and how does it manifest? The chapter begins with a review of existing literature, showing that existing research continues to operate with the assumption that backchannel diplomatic processes occur in isolation from domestic and public interactions. Following that, I propose a theoretical framework for understanding the public dimension of backchannel diplomacy. I argue that public shifts in discourse are a constitutive part of backchannel diplomacy when it is practised between adversarial states attempting to mend relations, because actors privy to the negotiations are likely to seek to legitimise the policy agreement domestically. I test this theory through a discourse

analysis of remarks and speeches made by President Obama about Iran in the lead up to the Geneva Joint Plan of Action (JPA) signed in November 2013. I find strong preliminary evidence for my theory, as various “negative” identities about Iran are deemphasised during the backchannelling period, and occurs *before* the election of Hassan Rouhani. These findings have substantial implications for both theory and practice as it changes the way backchannel diplomacy is conceptualised, and provides a potential avenue for *detecting* the presence of back channels. I conclude the chapter with possible methodological improvements and avenues for future research.

Theorising backchannel diplomacy

The bulk of literature examining backchannel and other forms of clandestine diplomacy remains historical and atheoretical. A large portion of the literature looks back into the distant past, examining the use of secret diplomacy prior to the two world wars (Black 2011; Carter 1964; Gallagher 2008; Gottlieb 1957; Walker 1968). In the period prior to the First World War, secrecy was rarely distinguished from diplomacy. The two were conceived as natural complements of each other, and was the *modus operandi* of foreign affairs for several centuries (Nicolson 1977; Berridge 2004). In particular, secret diplomacy was seen as a particularly effective tool for advancing state interest, and balancing between great powers according to the doctrine of *raison d'état* (the belief that the pursuit of state interest should be paramount) (Bjola and Kornprobst 2013: 24). This, in part, led to a web of secret treaties prior to the First World War, which some have blamed for triggering the war as various alliances were activated (Hamilton and Langhorne 2011: 67). The preponderance of non-democratic regimes and norms in Europe prior to the First World War, coupled with the belief that diplomacy was the purview of a skilled and educated elite, left diplomacy firmly out of public scrutiny and domestic oversight (Bjola and Kornprobst 2013: 28–30).

Secret diplomacy and covert operations (e.g. information gathering, court intrigues, etc.) were also intimately intertwined in this period. Black (2011: 107–9) for example, writes that mid-eighteenth-century France developed a secret diplomatic initiative known as the *Secret du Roi* to assist the ascension of the Polish monarchy, and contain Russian influence. The members of

Secret were to answer not only to the Foreign Ministry, but also secretly to the king, resulting in conflicting foreign policy actions. Likewise for the Habsburgs in earlier centuries, secret diplomacy consisted of a strong intelligence component (Carter 1964: 8). Agents not only collected important information for foreign policy decision-making at the capital, but were also involved in international intrigues and deceptions.

Though they provide useful insights into secret diplomacy's historic application, many of these accounts are of limited theoretical and practical value when applied to the contemporary diplomatic context. Not only is contemporary backchannel diplomacy conducted differently (it does not conceal the *outcome* of the agreement, and often does not encompass a covert operative function), the domestic norms and institutions that characterise contemporary nation-states differ, limiting the generalisability of these historical insights.

Some of the literature written within the past three decades however, does begin to examine post-Second World War backchannel diplomacy. These include studies of its role in the Vietnam War, South Africa's transition away from apartheid, the return of Hong Kong, and the peace process in the Middle East (Herring 1983; Rabi 1995). Herring (1983), examining the secret Pentagon cables of the Johnson administration in the Vietnam War, shows that secret negotiations between the United States and North Vietnam were largely ineffective. Secretive third-party peace initiatives from Poland, the United Kingdom and the Soviet Union failed, and the bombing campaign that Johnson hoped would force the North to concede had the opposite effect of hardening their resolve during the negotiations. Landsberg (2004: 11–15), in similar fashion, analyses the democratic transition of South Africa. He argues that “quiet” diplomatic efforts by international actors like the United States and United Kingdom were crucial for bridging differences between the white minority population and the African National Congress (ANC). Overall, these empirically detailed case studies often focus on *how* backchannel diplomacy was used, and its positive/negative impact on reaching the final agreement. However, they generally do not examine how the domestic context influences the secret negotiation process – how it shapes the negotiation strategy of actors and how actors might strive to obtain political buy-in for the eventual agreements.

Recent contributions from the field of negotiation studies however, have added theoretical rigour to the understanding of backchannel diplomacy.¹ These contributions can be broadly categorised into three areas of research: (a) the rationale and distinctiveness of backchannel diplomacy; (b) the effect of exclusionary processes on the outcome agreements; and (c) the societal and domestic constraints on backchannel negotiation.

Existing literature has sought to explain why states embark on back-channel diplomacy (Pruitt 2008; Wanis-St John 2006). For example, Pruitt (2008: 45–7) explains that states may employ back channels to break a stalemate in negotiations. Backchannelling provides states with greater flexibility, freeing them from the “audience effect” of open negotiations, where politicians simply rehash tried arguments and give “speeches to the gallery” to placate domestic concerns (Pruitt 2008: 41). Back channels may also be adopted in the pre-negotiation stage to explore potential resolutions when actors are ready to end the conflict (Pruitt 2007, 2008). Secrecy lowers the entry costs of negotiations, as previously stated preconditions can be skirted, and the public reputation of actors are not put at risk should talks fail. The flexibility of backchannel negotiations thus offers advantages compared to open negotiations, although some scholars warn that overreliance may lead to implementation problems (Pruitt 2008: 48, Wanis-St John 2008).

The second segment of literature picks up on the potential pitfalls of backchannel diplomacy, and analyses the implications of exclusionary processes on the durability of negotiated agreements (McClintock and Nahimana 2008; Nan 2008; Wanis-St John and Kew 2008; Zartman 2008). Wanis-St John and Kew (2008: 12) found that although the exclusion of civil society groups initially streamlined negotiation processes, it made the eventual agreement less durable. The exclusion of potential “spoilers” – actors that have an interest in the status quo without the agreement – led to swifter agreements, but at the expense of buy-in from society (see also Stedman 1997). This poses challenges to implementation, particularly of peace agreements that require support from a wide segment of society. Conversely, a more inclusive negotiation process may lead to great accountability and support, preventing a coalition of spoilers from derailing the peace process. Likewise, Zartman (2008: 56) analyses the exclusionary

negotiations in Tajikistan, and argues that although it facilitated the ending of the civil war, it did little to facilitate the political and societal development of the country. The literature in this field, while seeing a place for backchannel and exclusionary forms of negotiations, cautions against their excessive use, particularly in later stages of negotiations.

The final area of research analyses the societal and domestic interactions with backchannel diplomacy. Lieberfeld (2008) draws on Putnam's (1988) concept of "two-level games" and applies it to backchannel diplomacy. Putnam (1988) initially posited that domestic and international factors were "entangled" with each other in foreign policy. In particular, he explains that two levels of negotiations occur in international negotiations: (a) the "Level I" international negotiations between actors acting on behalf of the state; and (b) the "Level II" domestic negotiations between the negotiator and other key domestic players. Putnam (2008: 435–7) argues that "Level I" agreements between states are conditioned by what can be rectified and implemented by the parliaments and domestic arrangements of the respective countries; what Putnam calls "win sets". Lieberfeld (2008) applies this concept to backchannel diplomacy and argues that they are likewise subject to two-level game dynamics.

Although a distinctive feature of backchannel diplomacy has been its purported freedom from the need to pander to domestic sentiment, the autonomy is limited. Back channels may be shielded from *direct* public scrutiny, but backchannel diplomacy remains *indirectly* beholden to public opinion because the eventual agreement is public. The eventual public revelation forces negotiators to think strategically, and consider what "Level II" win-sets might be available. Indeed, Lieberfeld (2008: 138) argues that these dynamics are *amplified* in comparison to open negotiations. He examines the memoirs of Israeli and Palestinian negotiators in the lead up to the Oslo Accords, and finds that both sides appealed to domestic constraints to augment their bargaining position. Due to the secrecy of the negotiations, both sides had limited avenues to verify the claims of the other, intensifying the two-level posturing in negotiations. In spite of its secrecy and exclusion, backchannel diplomacy remains embedded within the domestic environment and interest of the parties involved.

Lieberfeld assumes, however, that negotiators are largely passive actors constrained by their domestic environment; that they do not actively

attempt to shape the domestic environment toward favouring the eventual agreement. Indeed, Lieberfeld (2008: 138–9) cites domestic opposition as *opportunities* and *leverage* for negotiators to strengthen their bargaining position at the international negotiation level. This may be true, but in negotiations between adversarial states attempting to mend relations, as in Oslo, the win-set may be small or non-existent. Public opinion may be firmly antagonistic toward the other state, and may accept only unconditional “victory” from the talks (e.g. removal of all Jewish settlements); compromise may be framed as weakness and may lead to diminished popular standing domestically (See also Entman 2004; George 2005b). In situations where international (Level I) negotiations can only agree on policies that are perceived to be unacceptable at the domestic (Level II) level, negotiators may attempt to widen the “Level II” win-set by shaping public opinion in favour of the agreement, as in the Oslo Accords.

A closer look at the primary documents Lieberfeld (2008) used (which he actually quotes, but does not develop on) reveals that actors privy to the negotiations sought (but failed) to positively alter their respective domestic public opinions. According to Savir’s memoirs, Yair Hirschfeld, an Israeli backchannel negotiator, had stressed, “the need to promote reconciliation actively between our two peoples, a ‘*peace propaganda plan*’ ” (Savir 1999: 21, emphasis mine). Further, Beilin’s memoirs note that the “issue of marketing [the plan]” was frequently brought up during back-channel negotiations (1999: 140). These statements imply that the domestic environment influences not only how interlocutors negotiate with each other (as in two-level games), but also how they relate with their domestic audience (to “market” the agreement). If this is true of back-channel diplomacy between adversarial states, then public discursive strategies (such as framing, identity construction, attributing blame/credit, etc.) that attempt to legitimise the eventual agreement can be expected to parallel the negotiations. The following chapter lays out the theoretical framework for this argument.

A discursive theory of backchannel diplomacy

Backchannel diplomacy has often been thought to operate in secret, and questions about a possible public dimension to it appear pointless, even

contradictory. I argue that this is not necessarily the case, particularly between adversarial states attempting to mend relations. This argument is based on three premises: (a) backchannel diplomacy is subject to domestic constraints (as shown above); (b) policy change is difficult, and needs to be publicly justified/legitimised; and (c) discursive strategies (e.g. framing, identity construction, etc.) are important tools policymakers use to obtain legitimacy for policies. Based on these premises, I expect actors privy to backchannel negotiations to engage in public (but tacit) discursive/rhetorical strategies to obtain legitimacy for the eventual agreement.² The result: a parallel public manifestation of backchannel diplomacy.

Policy change and public justification

Changes in policies often grab media headlines and the attention of scholars – the implementation of martial law in the Philippines, the British–Argentinian War over the Falklands, or the American intervention into Iraq. Yet, for every policy change, there are countless other policies that remain constant (and thus do not particularly interest scholars and the media). Policy continuity is the norm in both foreign and domestic politics. The inertia of bureaucratisation, the rigidity of preconceived beliefs (or “schemata”) about particular states, and the risk aversion of policymakers all contribute to making foreign policy change difficult (Kelley 1972; Mouritzen 1985; Welch 2005). Small adjustments around the fringes may occasionally be made (e.g. increasing troop commitments to Iraq), but broad policy changes are limited and slow (e.g. full troop withdrawal from Iraq). The practice of backchannel diplomacy is often one such attempt to pursue broad policy changes, resulting in deviation from the status quo and, in some cases, from established/dominant norms and narratives.³ Thus, apart from negotiating with the interlocutors of the other state, actors involved in backchannelling will also have to find strategies for justifying or legitimising the agreement to their domestic constituents (Krebs and Jackson 2007; Welch 2005).

Policies and international agreements are not judged in a vacuum or against an objective standard of “good” and “bad”. A ceasefire could be interpreted as a victory for stopping further bloodshed (legitimate), or as a treasonous compromise that gives undue recognition to “rebel” forces

(illegitimate). Which of these frames gain prominence will depend on argumentation and the communicative process that precedes and follows the agreement (Bially Mattern 2001; Deitelhoff 2009; Roselle *et al.* 2014). This process has come to be known as “public justification” (Kornprobst 2014), gaining “policy legitimacy” (George 2005b) or “deliberative legitimacy” (Bjola 2005). The key underlying component of this process is simply that *words matter*; that talk is *not* cheap. Explanations, verbal or written, are made to construct legitimacy for, or justify, political action (Krebs and Jackson 2007: 38). However, these frames and explanations are not judged by universal reason, but by “deeper intersubjective structures of meaning” embedded in society (Vucetic 2011: 13). They are often tailored to particular audiences to persuade them, or impede coherent counter-arguments (Krebs and Jackson 2007: 47). This frequently involves the use of discursive strategies by tapping into shared values (e.g. freedom, equality, sovereignty, etc.), narratives and identities (e.g. Israel as chosen nation; the United States as Great Satan) to construct legitimacy (Vucetic 2011).

Discursive strategies

Discursive strategies are attempts to shape discourse, such as framing, identity construction, and narrative-telling. A discourse is a way of representing an object, person, or phenomena, and how one should relate to it. They are composed of intersubjective sets of statements that attribute meaning and identity to the object, and are reinforced over time as they are repeated and used by different actors (Hall 2006; Weldes and Saco 1996). A simple statement such as, “Iran is a terrorist state that needs to be stopped” contains within it the object (Iran), its identity (terrorist state), and how one should relate to it (needs to be stopped). This statement does not operate alone, but feeds into a wider web of discourses by perpetuating three paradigms: (a) Iran needs to be stopped; (b) Iran is a terrorist state; and (c) terrorist states need to be stopped. The statement itself is likewise not interpreted alone, but is reinforced or resisted by competing discourses (Vucetic 2011).

Constructivist scholars have long emphasised the importance of discourses (Hopf 2012; Wendt 1999). At the societal level, discourses generate the social realities that participants of a community perceive (Hopf 2009:

279). At the policy level, discourses generate structures and narratives that constrain or enable certain policy options, and at times operate as “background knowledge” – policy choices that actors consider as “common sense” or “obvious” decisions (Adler 1997; Hall 2003). Policy changes, particularly those that attempt to deviate from existing narrative structures, require extensive use of discursive strategies (Vucetic 2011: 12–14). New practices have to be legitimised, while old practices and identities have to be reconstituted and/or delegitimised; the new (competing) discourse would have to contest against the dominant/hegemonic discourse.

Although state officials do not use the academic language of “discourse” or “narrative structures”, they are conscious of similar concepts when they speak of “public relations”, “public diplomacy”, or “marketing policies”. Indeed, the very role of public relations officers and press secretaries is to frame policies in a way that is publicly palatable. Discursive and rhetorical strategies may be consciously conducted to “re-brand” the other state, or may be unintentionally employed as part of a wider marketing strategy for the agreement. This pursuit is seen across various policy arenas, whether in legitimising changes in economic policy (Hall 2003), in identifying security threats (Weldes and Saco 1996), or in mending relations (Lieberfeld 2008). In all these instances, state officials and politicians embarked on discursive strategies to persuade their own publics in order to obtain legitimacy for policy change. Whether or not they succeed in this contestation is a separate issue that this chapter will not delve into; the point is that actors embark on this discursive contestation for policy legitimisation.

Backchannel’s discursive traces

The same logic of public justification/legitimation through discursive strategies can be applied to backchannel diplomacy between adversarial states attempting to mend relations. This shift constitutes a deviation from existing narrative structures, one that has been constructed over time by both elites and popular sources to sustain the adversarial relationship between the two (or more) states (e.g. the United States and Iran; Israel and Palestine; North and South Korea) (see Welch 2005: 36–41). The identity generated of the “Other” and the relationship between “us” and “them” needs to be (partially) deconstructed, and new identities formed, before relations

can be legitimately normalised (see Campbell 1998; Neumann 1996); the audience will need to be convinced of an alternative way to relate to the “Other”. This is particularly salient between states with a long history of antagonism where the negative identity has been entrenched and has become the dominant discourse.

One way to trace these discursive changes empirically is by looking at discourse produced by actors involved in the backchannel negotiations. These actors often include the chief executive of the state, elements of the Cabinet and Foreign Ministry, and the negotiators themselves. The approval of the former two are usually necessary for backchannel diplomacy to take place (indirect involvement), while the latter are directly invested in the negotiations. Shifts in the way these actors speak of the other state can be expected. In particular, I expect shifts in three related categories of discourses: (a) how the identity of the other state is portrayed, (b) how the current situation/relationship between the two or more states is framed, and (c) what prescription is recommended. Each of these elements builds on each other to reinforce a collective paradigm of the “Other”, and will likely be challenged in order to “prepare the ground” for the eventual agreement. New “positive” identities⁴ may be grafted on to the “Other”, while “negative” identities previously ascribed may be downplayed/omitted. Likewise, the framing of the situation and relationship between the states may also be reconstituted (e.g. “the conflict is at a military stalemate”) to make normalising relations more reasonable and legitimate (e.g. “we should deploy diplomacy to end it”).

These discursive strategies are most likely to be practised in the period between t , when backchannel negotiations begin, and t_{+1} , when the agreement is made public – the period I call the *Public Manifestation Zone* (PMZ) of backchannel diplomacy (see [Figure 9.1](#)). The closer one gets to t_{+1} , the more intensive these practices are expected to be because of the heightened expectation of a successful agreement between the parties. The discourses produced by these actors during the PMZ are expected to differ from those they themselves perpetuated at t_{-1} , the period *before* the commencement of backchannel diplomacy. These actors are also likely to contest the dominant discourse at t_{-1} if it is largely negative of the other

state. Further, events that occur during the PMZ are likely to be used by these actors to strengthen the discursive reconstruction of the other state.

These theoretical expectations can be summed up into four empirically falsifiable hypotheses:

H₁: During the PMZ, actors privy to backchannel negotiations will emphasise “positive” and de-emphasise “negative” discourses of the state they are negotiating with, compared to their discourse at t_{-1} .

H₂: During the PMZ, these actors will contest the dominant discourse found at t_{-1} if the dominant discourse portrays largely “negative” discourses about the state they are negotiating with.

H₃: These actors will position events (through emphasis or omission) occurring within the PMZ to reinforce the new discourse of the other state they are attempting to construct.

H₄: The difference between discourses during the PMZ and those at t_{-1} of these actors is expected to increase as time approaches t_{+1} .

The following section will test these hypotheses empirically by embarking on a discourse analysis of President Obama’s speeches leading up to the JPA signed in November 2013.

Case study: US–Iran backchannel diplomacy

This section will test my theory about the public manifestations of back-channel diplomacy using the 2013 JPA between Iran and the P5 + 1 as my case study. In particular, I analyse the backchannel negotiations between Iran and the United States. The section will begin with a brief background of US–Iranian relations since the Islamic Revolution of 1979. The section will then discuss the method used in this section, followed by a presentation of the findings uncovered by a discourse analysis of speeches and remarks

made by President Obama.⁵ I find strong preliminary evidence for my theory, as identities such as “violent”, “untrustworthy”, “regime”, and Iran’s association with other “rogue” states are de-emphasised during the PMZ. Further, the “US versus Iran” frame, which portrayed an antagonistic relationship between the two states, was also de-emphasised. These are a particularly significant shift as they occur *before* the election of Hassan Rouhani and substantive front-channel negotiations.

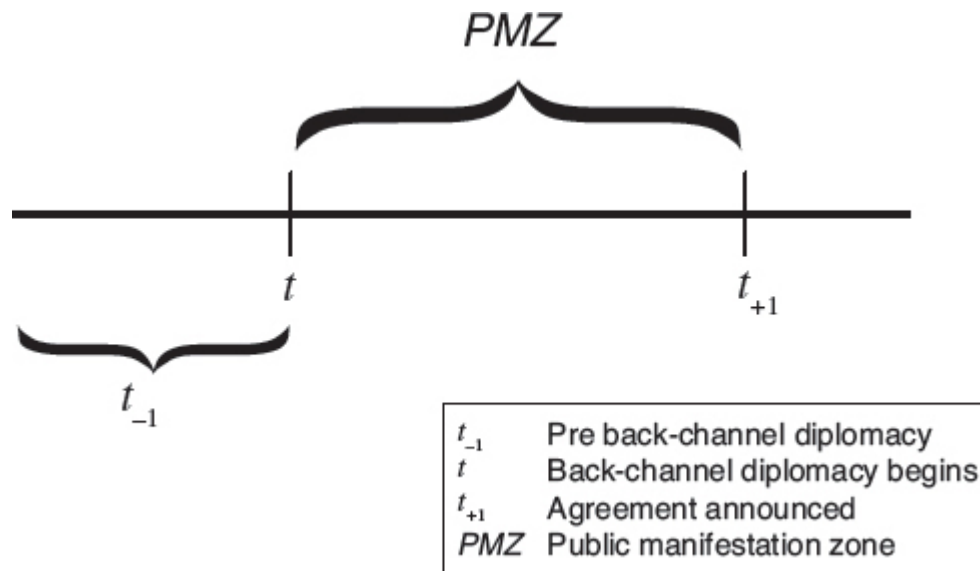


Figure 9.1 Hypothesised public manifestation zone of backchannel diplomacy.

Background

The United States has had a difficult and adversarial relationship with Iran since 1979. Following years of brewing unrest against Shah Reza Pahlavi of Iran, a revolution in Tehran forced the US-backed monarch to flee the country in 1979. Within months of the overthrow, Ayatollah Khomeini systematically consolidated power and established an Islamic Republic – one that is rooted in religious populism, and immensely anti-American in rhetoric (Halliday 1988; Keddie 2006). The United States was framed as the “Great Satan” for its alleged corrupting influence on Iranian society, and its previous support of the Shah’s regime. From the US perspective, Iran was a religious theocracy run by extremist leaders (McAlister 2011; Shahghasemi *et al.* 2011). In November that same year, US–Iranian relations deteriorated

sharply when the Iranian state failed to protect the US embassy in Tehran from radical Iranian students. The students stormed the embassy, and held 52 US embassy officials hostage for over a year (Keddie 2006). This incident, broadcasted incessantly across the United States, heavily framed societal perceptions and American policy toward Iran.

Relations between the two states continued on a deteriorative spiral as events, interpreted through existing schemata, fed mutual distrust and suspicion. The US tacit support of Iraq in the Iran–Iraq war, the 1988 “accidental” downing of an Iranian civilian flight by a US warship, Iran’s sponsorship of alleged terrorist movements in the Middle East, and the 2002 uncovering of previously undeclared nuclear facilities in Iran, exacerbated relations between the United States and Iran (Fawcett 2013; Keddie 2006). In particular, the presidencies of Bush and Ahmadinejad saw US–Iranian relations hit new lows. The former categorised Iran as part of an “axis of evil”, while the latter took an uncompromising and hard-lined stance toward the United States and its ally, Israel. Although there were small windows of cooperation, concessions, and periods of détente, overall US–Iranian relations remained adversarial. Indeed, US–Iranian relations remain a highly securitised issue, with the United States officially still facing a “national emergency with regards to Iran” since 1979 (White House 2013).

A key issue of contention between the two states has been Iran’s nuclear programme. The nuclear programme originally pre-dated the Islamic revolution, and initially enjoyed support from the United States and Germany during Shah Pahlavi’s regime. However, support was promptly halted following the revolution. The nuclear issue gained salience in the late 1980s when the Iranian leadership decided to restart the programme. Iran argued that its programme was peaceful, to such ends as energy diversification (Bahgat 2006). The United States however, remained sceptical and lobbied governments throughout the 1990s to block Iranian attempts at obtaining foreign technology, uranium supplies and expertise for its programme. The issue escalated further in 2002 when an Iranian opposition group revealed that Iran possessed two undeclared nuclear facilities (Bahgat 2006). This, coupled with the election of hard-liner Iranian President Ahmadinejad in 2005, prompted the United States and other European states to adopt increasingly stringent measures, such as sanctions and boycotts, to deter Iran’s nuclear ambitions (Sebenius and Singh 2012).

The antagonism and mistrust between the two states were not restricted to government-to-government relations, but spilled over into popular representations. Izadi and Saghaye-Biria (2007), in their discourse analysis of American newspaper editorials from 1984 to 2004, found six orientalist themes that were perpetuated when Iran's nuclear programme was discussed – inferiority, irrationality, submissiveness, Islam as threat, Jews versus Arabs, and untrustworthiness (see also Ahmadian and Farahani 2014; Rashidi and Rasti 2012). Further, polling in 2012 about attitudes toward Iran found that 80 per cent of Americans felt Iran's influence in the world was “mainly negative” (BBC World Service 2012). These indicators point to a deep and entrenched “Othering” of Iran in American discourse.

This was the backdrop in the lead up to the JPA signed between Iran and the P5 + 1 on 24 November 2013, the first international agreement between the United States and Iran in over three decades. In the lead up to the agreement, about five rounds of backchannel negotiations (mostly held in Oman) occurred between US and Iranian officials (Klapper *et al.* 2013b; Rothkopf 2014). Deputy secretary of state William Burns and foreign policy advisor Jake Sullivan, led the US delegation throughout talks, and they were later joined by undersecretary for political affairs Wendy Sherman when front-channel negotiations were opened (Klapper *et al.* 2013b). According to these reports, the backchannel negotiations began in March 2013, almost three months *before* the election of Hassan Rouhani; during the presidency of Ahmadinejad (Klapper *et al.* 2013a; Rothkopf 2014).

For the purposes of this particular case study, an additional hypothesis may be formulated that strengthens the link between backchannel diplomacy and discursive change. The election of Hassan Rouhani, who is viewed as a “moderate” in some circles, may be an alternative explanation that explains the change in discourse. Therefore:

H₅: A shift in President Obama's discourse about Iran should occur *before* the Iranian elections in June.

The backchannel diplomacy between the United States and Iran makes for an ideal case because the adversarial relationship between the United States

and Iran transcends the elite/governmental-level (at least on the US side). As shown above, this adversarial relationship and stereotyping is present in societal and popular sources. This is important for my theory, as it envisages negotiators constrained by domestic opinion/stereotypes of the other state. Further, there has been relatively wide coverage on the details of the backchannel negotiations, such as when they began and who was involved. The case was selected *before* any analysis of sources, and was not selected on the “dependent variable” (in this case, discursive changes).

Method

This chapter conducts a discourse analysis of press releases and speeches delivered by President Obama in 2012 and 2013. President Obama was selected for this case study primarily due to his frequent public appearances, speeches, and addresses to the nation, making comparison possible.⁶ The primary aim of this exercise is to inductively uncover identities and meanings ascribed to Iran and the US–Iran relationship, and to detect changes between them. As my theory is premised on intersubjectivity and latent meaning, I rule out methods such as content analysis, which assumes that texts and meaning exist independently from the context (Hopf 2004). Discourse analysis, in contrast, accounts for intersubjectivity and the context in which various words are used and interpreted.

To validate Hypotheses 1, 3, 4 and 5, I conduct a purposive sample of speeches and remarks by President Obama broadly based on two criteria: the source either (a) speaks directly/substantially about Iran, or (b) is a widely watched speech/remark by President Obama. The t_{-1} time period is defined between 1 January 2012 and 28 February 2013, while the PMZ is defined between 1 March 2013 (beginning of back channels) and 23 November 2013 (signing of JPA). A total of 18 sources were sampled based on the criteria. These sources can be organised into six categories:

- a Obama’s State of the Union address⁷
- b Obama’s notices and messages to Congress regarding sanctions and national emergency procedures
- c Obama’s annual address to the Iranian people on Nowruz

- d Press conferences by Obama⁸
- e US–Israel related remarks and press conferences
- f Obama’s speeches at the UN general assembly.

To test Hypothesis 2 on whether Obama attempts to contest the dominant discourse, I complement the elite sources from Obama with popular sources. A random sample of two editorials each from the *Wall Street Journal*, the *New York Times*, and the *Washington Post* that spoke specifically about Iran was collected. Further, I sampled the two top-grossing US feature films in 2012/13 that speak about Iran – *Argo* and *Red 2* (IMDb 2012, 2013). These popular sources are meant to proxy the societal discourse surrounding Iran and to consider the discursive environment that Obama was operating in.⁹ The dominant discourse at t_{-1} can be conceptualised as the intersection between the elite (Obama) and popular sources. As my theory is about whether actors privy to backchannel diplomacy *attempt* to shape the wider discursive environment, and not if they are successful in persuading their audience, an analysis of popular sources at t_{+1} will not be necessary; the discourses produced by Obama himself, and popular sources at t_{-1} will suffice.

My analysis attempts to uncover three types of discourses in the sources: (a) Iranian identity, (b) situational framing, and (c) prescription. In order to ensure that my own biases do not substantially affect the interpretation of identities, a robust set of coding rules were employed to minimise the bias and allow my results to be replicated and verified by other coders.¹⁰

The first step encompasses ascertaining the presence of various discourses. All the sources were read once through before coding began to get an overview of possible discourses. Coding began on the second read. Once a discourse was located, it was coded in one of four ways. First, a discourse may be coded as present (e.g. Iran seeks nuclear weapons). Second, it may be denied as part of this identity/relationship (e.g. Iran does not present an immediate threat). Third, it may be coded as mixed, where the identity/relationship is both present and denied in the same source. Fourth, a discourse may be coded as absent when it is not mentioned in the source. Discourses at t_{-1} that saw resonance across both popular sources, and the

majority of Obama's speeches/remarks (in this case four or more out of six) were coded as dominant discourses.

The second step analyses *how* the discourse was mentioned. In particular, sources were analysed to consider whether the discourse was (a) simply stated, (b) implied, or (c) justified with arguments. Implication may point to discourses that are either taken for granted, or discourses that cannot be explicitly mentioned (a constraining effect). Discourses that are justified with arguments may suggest that these discourses are not universally accepted or deviate from the dominant discourse, and thus require some form of justification. In dealing with prescriptive discourses, an additional layer of coding is applied: sentiment and portrayal toward the prescription. Prescriptions that are favoured in the sources (e.g. diplomacy is preferred) are coded positive, while those that are opposed or costly (e.g. war would be disastrous) are coded negatively.

The third step considers the intensity and emphasis of certain discourses. Discourses that are stated or emphasised frequently are coded to display this through the number of symbols displayed. The number of symbols ranges from one to three, where, + denotes the discourse is indicated as present once, ++ twice, and +++ three or more times in the same source.¹¹ Table 9.1 summarises these coding rules.

Not every discourse that was uncovered in the sources were presented in the final findings in order to limit the number of discourses, and ensure only meaningful ones are presented. I proxy "meaningfulness" through recurrence in different sources. I assume that important identity/relational indicators should show up in different texts about the same subject. Therefore, for a discourse to be displayed, they should appear in more than one source from different classifications.¹² Some discourses that were too narrow but saw substantial conceptual overlaps with other discourses were combined to form more meaningful and general indicators.

A three-step analysis is undertaken to compare discursive change between t_{-1} and the PMZ. The first step encompasses summarising the discourses into a table for pattern identification. Patterns of emphasis and omission can be clearly seen from this table. The second step involves paired comparison between similar sources at t_{-1} and the PMZ to analyse for specific changes

in discourse and control for the audience. The third step involves attempts to rule out alternative explanations.

Findings and discussion

A total of nine Iranian identities, five situational frames, and three prescriptive discourses were uncovered from the discourse analysis (See [Appendix A](#) for detailed list and coding). These are summarised and presented in [Table 9.2](#).

Pattern identification

From [Table 9.2](#), various general patterns can be detected. First, certain identities and frames produced by Obama remained constant throughout the two time periods. The discourse of “seeking nuclear weapons”, “threat”, “restricting rights”, “deception”, and “largely Iran’s fault” remain relatively stable. “Seeking nuclear weapons” for example, remains emphasised in both periods, while Iran’s identity as a “deceptive” state is infrequently emphasised in both periods. The prescription of diplomacy and military action remain likewise remain constant and perceived largely similarly throughout the two periods.

Table 9.1 Coding matrix

+	Present*		Positive portrayal**
–	Denied*		Negative portrayal**
~	Present/denied*		Mixed portrayal**
	Absent		Dominant discourse
()	Assumed/implied	* Frequency denotes emphasis and intensity	
[]	Justified	** Only valid in “Prescription” boxes.	

Table 9.2 Summary of identities, situational framing and prescriptions

t ₋₁										
Popular						PMZ				
Obama						Obama				
Media	Congress	SOTU	US-Israel	Press	Nowruz	UNGA	Congress	Nowruz	US-Israel	UNGA
+++		(++)	[+]	[++]		+	+	~	+	[~]
+	+	+	++	[++]		[++]	+	++	[++]	
		++	++	++				+	+	++
+	++				++	+	++			
+			++			++				
++	+		++	[++]	+	+				
++		+	+			+				
++	+						+			
++	+	+	++	++	++					

n

Iranian identity
Seek nuclear weapon
Threat
Isolated
Restrict rights
Violent
Untrustworthy
Rogue state associatic
Deceptive
Regime

ns	++	(+)	+	+++	[+++]	++	+	(+)	+	++	[~]
	+		+++	+++	+++	+	+	+	+	+++	[++]
	+++	+	+	+++	++	++	+	(-)	+	+	~
gramme	+++										
			+	+	[++]			+			
	++		++	+	+++			+		++	
	++	+++	+		+++			++		+	
	(+)		(++)	+					(++)		[-]

k		Positive portrayal**
		Negative portrayal**
		Mixed portrayal**
		Dominant discourse
d	* Frequency denotes emphasis and intensity	
	** Only valid in "Prescription" boxes.	

<i>Situation frame</i>	
Largely Iran's fault	
Contravene obligation	
United States vs Iran	
Advance nuclear program	
Iran weakened	
<i>Prescription</i>	
Diplomacy	
Sanctions	
Military action	
Legend:	
+	Present*
-	Denied*
~	Present/denied*
	Absent
()	Assumed/implied
[]	Justified

Some discourses however, do see change. Iran's identity as "violent", "untrustworthy", "rogue state association", and "regime" are absent in all of the sources analysed during the PMZ. Similarly, the situational frame of "Iran weakened" is slightly less emphasised, while the "US versus Iran" frame is now more mixed compared to the unanimity of its presence at t_{-1} . Prescriptively, sanctions also received less attention during the PMZ. These patterns provide evidence that certain identities and frames are systematically being deemphasised during the PMZ, lending partial support for Hypotheses 1 and 2. Further, the "US versus Iran" frame is contested indirectly as words used to describe the US-Iranian relationship change (discussed in the next section). The pattern analysis however, did not uncover new discourses about Iran as partially expected in Hypothesis 1.

This analysis of patterns thus only lends partial support to Hypotheses 1 and 2. However, this evidence alone is insufficient as only general patterns are analysed, and certain intricacies of specific texts may be lost. Further, a potential critique may be that these patterns may be alluded to different audiences and contexts. I therefore conduct a deeper analysis of the tone and words used through paired comparisons between three sets of documents.

Paired comparison

Three paired comparisons are conducted between speeches/remarks that have similar contexts and audiences. Ideally, these are annual speeches where the 2012 speech falls into t_{-1} , and the 2013 speech falls into the PMZ. Three pairs of documents are analysed: (a) Obama's Nowruz Remark to the Iranian people, (b) Obama's speech to the United Nations general assembly (UNGA), and (c) a set of notices issued by Obama to Congress regarding the continuation of the Iran National Emergency.

Nowruz remarks

Annually, Obama sends a greeting to the Iranian people during the celebration of Nowruz. While not directed at the US domestic audience, remarks made publicly do take the domestic audience partially into consideration as research into the audience effect of international negotiation and diplomacy highlight (Baum 2004; Fearon 1994; Pruitt 2008).

The 2012 remark in March began with an acknowledgement of the “tension” between Iran and the United States, and went on to denounce the Iranian government for erecting an “electronic curtain” against the free flow of information (White House 2012c). Indeed, the term “electronic curtain” itself seems to be aimed at conjuring images of the Cold War-era Soviet “Iron Curtain” in Europe. The freedom and prosperity of Iranian-Americans was also juxtaposed against the “repression” of the Iranian people: “Here in the United States, Iranian-Americans prosper and contribute greater to our culture ... [In Iran,] the Iranian people are denied the basic freedom to access the information they want” (White House 2012c). The tone toward the Iranian government was confrontational and accusatory: “The Iranian people are denied basic freedom ... the Iranian government jams signals.... It censors the Internet ... The regime monitors ... the electronic curtain that is cutting the Iranian people off from the world” (White House 2012c).

Further, Obama attempts to paint an image of the United States as siding the Iranian people *against* the Iranian government. He explained that he was issuing guidelines to “make it easier for the Iranian people to use the Internet”, an implied attempt to help Iranians scale this “electronic curtain” (White House 2012c). Although these remarks were likely in response to the Iranian government’s attempt to restrict Internet freedom in January (Freedom House 2012), the tone is nonetheless harsh, and went beyond simply criticising the Iranian government. Overall, the remarks indicated that the United States was standing by the Iranian people *against* oppression from the Iranian government. The Iranian government was given no voice, and was framed as a victimiser whose recent policies were for “the sole purpose of protecting its own power” (White House 2012c).

In contrast, Obama’s remarks in March 2013, about two weeks after backchannel negotiations began, were less confrontational. The main topic of the Nowruz remarks was on Iran’s isolation and nuclear programme (White

House 2013b). The tone however, was neutral, if not hopeful. Obama refers to Iran's government as "Iranian leaders" and "Iranian government" (White House 2013b) in contrast to "Iranian regime" – a term he uses twice in his 2012 remarks. There was no hint of siding the Iranian people *against* the Iranian government. Instead, the focus was on the United States working *with* the Iranian government to find a settlement: "Indeed, if – as Iran's leaders say – their nuclear program is for peaceful purposes, then there is a basis for a practical solution ... I hope they choose a better path" (White House 2013b).

This is further seen in the ending statements of the 2012 and 2013 remarks:

So in this season of new beginnings, the people of Iran should know that the United States of America seeks a future of deeper connections between *our people* – a time when the electronic curtain divides us is lifted and your voices are heard.

(White House 2012c, emphasis mine)

As new spring begins, I remain hopeful that *our two countries* can move beyond tension. And I will continue to work toward a new day between our nations that bears the fruit of friendship and peace.

(White House 2013b, emphasis mine)

In the 2012 remarks, the focus was on engaging the Iranian people, bypassing the government. In the 2013 remarks, the focus was on the relations between the two countries, which in the context of the quote, was talking about governmental relations.¹³ Although the Iranian government was still blamed for its "unwillingness" to address the nuclear issue, the overall sentiment continued to be one of potential collaboration *with* the Iranian government (White House 2013b). Obama redefined the relationship between Iran and the United States by framing Iran as a *potential partner*. This contrasts against the previous "us versus them" frame that characterises much of US–Iran discourse. This lends support to Hypothesis 1 and Hypothesis 2, as the dominant "US versus Iran" frame is denied.

These discursive shifts are particularly noteworthy for two reasons. First, this occurred in March, *during* the presidency of Ahmadinejad, lending

support for Hypothesis 5. Second, in January 2013, it was reported that Iran arrested 11 journalists a part of a wider clampdown on BBC and the Voice of America, and Iran announced that it was upgrading its enrichment centrifuges at Natanz (BBC News 2014). These issues however, did not get picked up in the remarks, unlike in 2012. This lends partial support for Hypothesis 3.¹⁴

UNGA speech

The second pair analyses the UNGA speech by President Obama in September of 2012 and 2013. In 2012, Iran was spoken of as part of a larger section on the future of the world, and the unacceptability of trend towards intolerance and violence. Iran was associated with “incitement against Sufi Muslims and Shiite Pilgrims”, the Syrian dictator that “massacres his people”, and is portrayed as the epitome of these problems (White House 2012d):

In Iran, we see where the path of a violent and unaccountable ideology leads ... just as it restricts the rights of its own people, the Iranian government continues to prop up a dictator in Damascus and supports terrorist groups abroad.

(White House 2012d)

Iran’s potential threat and violence to the region was also emphasised: “make no mistake, a nuclear-armed Iran is not a challenge that can be contained. It would threaten the elimination of Israel, the security of Gulf nations, and the stability of the global economy” (White House 2012d). The “US versus Iran” frame was also played up when Obama concluded his section on Iran with: “the United States will do what we must to prevent Iran from obtaining a nuclear weapon” (White House 2012d).

This contrasts with Obama’s speech in 2013, where the discourses of threat, violence and adversarial US–Iran relations were absent (White House 2013d). This occurred even though Obama spoke about Iran about four times longer in 2013. The context of Iran was brought up as part of the US policy in the Middle East, and placed alongside the Arab–Israeli conflict (White House 2013d). Unlike in 2012, Iran was not directly associated with other “rogue” states and conflicts but was likewise spoken of as a potential partner.

In this 2013 speech, Obama did not frame the adversarial relationship between the United States and Iran as primarily Iran's fault. He explained that the root of the strained relationship was mutual:

Iranians have long complained of a history of US interference in their affairs and of America's role in overthrowing an Iranian government during the Cold War. On the other hand, Americans see an Iranian government that has declared the United States an enemy and directly – or through proxies – taken American hostages, killed US troops and civilians, and threatened our ally Israel with destruction.

(White House 2013d)

Note also the subjective phrasing of the words used to describe Iran. Rather than accuse objectively that Iran had committed various wrongs as in 2012, Obama framed it as American *perception* of Iran. Interestingly, Obama also took into account verbal assurances from Iran. He says:

Meanwhile, the Supreme Leader has issued a fatwa against the development of nuclear weapons, and President Rouhani has just recently reiterated that the Islamic Republic will never develop a nuclear weapon. So these statements made by our respective governments should offer *the basis for a meaningful agreement*.

(White House 2013d, emphasis mine)

This is important because the Iranian government had made previous assurances that were deemed untrustworthy by the United States. In his 2012 speech, Obama had accused Iran of “fail[ing] to take the opportunity to demonstrate that its nuclear program is peaceful”, in spite of Iran's verbal assurance (White House 2012d). Although there was a new government in Iran (I will address this in the following section), as of September 2013 when the speech was made, the resumption of negotiations between Iran and the P5 + 1 had barely begun, and US–Iran relations remained publicly frosty.

Overall, the speech did *not* frame Iran as an aggressor or security threat to the world. Instead, it was spoken off as a potential partner, “one based on mutual interest and mutual respect”, if the nuclear issue could be resolved

(White House 2013d). These discursive changes thus support Hypotheses 1 and 2.

National emergency notices

The last paired comparison looks at a set of notices issued by Obama to Congress regarding the continuation of the National Emergency with regards to Iran. A total of four messages were issued to Congress – 12 March 2012, 9 November 2012, 13 March 2013 and 12 November 2013. The purpose of these messages was to inform Congress of the intent of the president to extend the emergency by approximately a year.

In the first three sources, the “crisis” in US–Iran relations, and the threat Iran posed to the US was used to justify the extension:

The crisis between the United States and Iran resulting from the actions and policies of the Government of Iran has not been resolved. The actions and policies of the Government of Iran are contrary to the interests of the United States in the region and continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

(White House 2012a, 2012e, 2013a)

The March 2013 message to Congress, which occurred immediately after the commencement of backchannel negotiations, saw little change in discourse (White House 2013a). However, on the eve of the JPA deal, on 12 November 2013, the language used to justify the continuation of the National Emergency shifted:

Because our relations with Iran have *not yet returned to normal*, and the process of implementing the agreements with Iran, dated January 19, 1981, is still under way, I have determined that it is necessary to continue the national emergency declared in Executive Order 12170 with respect to Iran.

(White House 2013e, emphasis mine)

It is worth noting that this shift occurred before the JPA was signed, and took place in the wake of inconclusive Geneva talks on 10 November, two days before this notice was made (Arms Control Association 2015). While it does not lend particularly strong evidence to Hypothesis 1 or 2, it does provide evidence for Hypothesis 4, which expects differences between discourses at t_{-1} and the PMZ to increase as time approaches t_{+1} .

Nonetheless, in spite of the evidence presented, strong alternative explanations may be cited for the change in discourse. In particular, (a) the election of Hassan Rouhani in June 2013, and (b) the parallel open negotiations that subsequently developed between Iran and the United States may be cited as alternative explanations.

Addressing alternative explanations

A key issue regarding the link between the shift in discourse and back-channel diplomacy remains the issue of attribution. From the analysis above, I have provided strong evidence of shifts in discourse. However, how much of it can be attributed to backchannel diplomacy?

Perhaps the single strongest argument against my theory is the election of “moderate” president, Hassan Rouhani. The election occurred in June, and Rouhani was inaugurated in August. This alternative explanation can be addressed in two ways. First, discursive change *before* Rouhani’s election, and in light of events such as arrests and upgrading enrichment centrifuges provides strong evidence against this explanation. This is seen particularly clearly in the Nowruz speech. Indeed, although I did not present it earlier due to the similarity in findings from other paired comparisons, a comparison between the 2012 and 2013 US–Israel press conferences (which occurred in March) likewise uncovers discursive changes. In 2012, Obama emphasised Iran’s violent nature:

[Iran] has called for the destruction of Israel ... we do not want a regime that has been a state sponsor of terrorism being able to feel that it can act even more aggressively or with impunity as a consequence of its nuclear power.

(White House 2012b)

This identity is clearly absent in 2013, although the press conference was longer, and Obama spoke more about Iran (White House 2013c). Further, the tone was more neutral, and Obama appeared to be answering questions about Iran much less directly. Discursive shifts in the 2013 Nowruz remarks and the US–Israel press conference (where I would expect the strongest statements against Iran) provide strong evidence against the “Rouhani election” theory.

The second way to deconstruct this is to consider just how moderate Rouhani actually was, and how significant the elections really were. Rouhani’s reputation was not a given, but had to be constructed. Opponents of the US–Iranian negotiations frequently cite Rouhani’s somewhat hardliner past, the supreme leader Ayatollah Khamenei’s hold over Iran’s nuclear programme, and the undemocratic nature of Iranian elections (House Committee of Foreign Affairs 2013). Furthermore, Obama faced immense bipartisan pressure in Congress *against* reducing sanctions against Iran, which criticised Rouhani as a tool by the supreme leader to deceive the United States into concessions (House Committee of Foreign Affairs 2013). The notion that Rouhani is a “moderate” and influential is therefore anything but cogent in the discourse of the American political elite. Perhaps the question that should be asked instead is why Obama emphasises the seemingly “positive” image of Rouhani. Perhaps one other lens to view the elections is that it provided the Obama administration with an event that could be galvanised to re-frame and reconstruct the identity of Iran to prepare the ground and generate legitimacy for the eventual agreement. Future research could perhaps look into how and why the “moderate” image of Rouhani was constructed.

Another alternative explanation to my theory is that changes in discourse would have occurred anyway without backchannel diplomacy due to the presence of front-channel negotiations. This is admittedly difficult to separate, since backchannel diplomacy influenced the success of the front-channels. But leaving that aside, substantive talks between the P5 + 1 and Iran only occurred from April (Arms Control Association 2015).¹⁵ The discursive changes in the Nowruz remarks, and the US–Israel press conference, occurred *before* this, ruling this out as an alternative explanation.

In sum, I have tried to rule out competing explanations by relying primarily on the time-order of discursive change. Changes in discourse *before* the elections and substantive negotiations between the P5 + 1 and Iran provide strong evidence against these alternatives.

Overall, the discourse analysis provides strong preliminary support for my theory. In particular, Hypotheses 1 (Obama t_{-1} v. Obama PMZ), 2 (Obama PMZ v. dominant discourse) and 5 (discursive change before Iranian elections) are strongly supported. The pattern identification revealed a systematic de-emphasis of certain (“negative”) identities and frames about Iran during the PMZ that were previously espoused in 2012. The in-depth paired comparisons also revealed nuances such as the construction of Iran’s (“positive”) identity as a potential partner and denial of the “US versus Iran” frame.

Hypothesis 3 (events emphasised/deemphasised to reinforce new identities) is likewise partially supported in the paired comparison, although not through active framing of events, but through the omission of events that may otherwise have been emphasised to discredit or negatively frame Iran. Hypothesis 4 (difference between discourse at t_{-1} and PMZ widens towards t_{+1}), finds some support in Obama’s notices to Congress, which shifted little at around time t , but changed significantly just before t_{+1} . Further, Obama’s 2013 UNGA speech (which took place in September) began to contest some of Iran’s previous identities, rather than simply omit them as in the US–Israel press conference. However the evidence remains insufficient for Hypotheses 3 and 4 because it can be explained away by the two alternative explanations I have cited. Nonetheless, the overall theory receives strong preliminary support from the discourse analysis of speeches and remarks by Obama.

Concluding remarks and further research

This chapter has sought to expand current understanding of backchannel diplomacy by exploring, albeit counter-intuitively, a public dimension to it. Drawing extensively on wider research on foreign policy and constructivist thought, I posit that public shifts in discourse can be expected when backchannel diplomacy is practised between adversarial states attempting to

mend relations; that this parallel public manifestation is a constitutive part of backchannel diplomacy. This results because actors involved in the negotiations attempt to legitimise the policy agreement domestically – to “prepare the ground” for the eventual public announcement by engaging in discursive strategies.

Through an analysis and comparison of discourse produced by Obama between January 2012 and November 2013 in the lead up to the JPA, I have provided strong preliminary evidence for my theory. Obama’s speeches and remarks during the PMZ tended to de-emphasise various “negative” identities and frames about Iran and US–Iranian relations through systematic omission, and sought to construct newer “positive” ones. Many of these “negative” identities and frames were dominant discourses before backchannel negotiations began, and were contested through omission or denial. Likewise, events that would have reinforced previous identities were not activated. Alternative explanations such as the presence of front-channel negotiations and Rouhani’s election were also addressed primarily through changes in discourse that occur before both of these events.

My findings therefore provide strong preliminary support for my theory about the public manifestations of backchannel diplomacy. I say preliminary because this analysis only examines a single case and a single actor from the US side. Future research could develop this further by examining the discourse of other actors privy to the negotiations, such as Javad Zarif or Hassan Rouhani. My theory is conceptualised not only to apply to democracies, but to authoritarian governments as well. Indeed, the Iranian government bases its legitimacy on religious populism and identifies itself strongly *against* the United States, making concessions to the United States extremely difficult. This would make an ideal case study for researchers with the necessary Farsi language skills. Other cases of back-channel diplomacy could also be used to test my theory, such as the rapprochement between the United States and China in the 1970s. Coherence across actors and cases would strongly substantiate the validity and generalisability theory.

My analysis also only relies on a single coder. Future research could leverage on multiple coders to ensure that the identities uncovered are replicable and not intentionally “read into” the source. In this chapter, I have tried to limit bias through a robust set of coding rules, which future research could also tap on to replicate my findings.

Lastly, researchers could tap on social media as a potential avenue for data collection. The growing use of social media platforms by politicians and governmental officials to engage the public provides a treasure-trove of primary sources for discourse analysis. Not only do these act as mini-press releases, their less-formal nature allows actors to articulate things they would not otherwise mention in a formal press release, such as the phone conversation between Rouhani and Obama reported on Twitter.¹⁶ This allows for small and tacit shifts in discourse to be uncovered.

There are substantial theoretical and practical implications if future research yields strong evidence for the theory. Theoretically, it would expand the way researchers conceptualise backchannel diplomacy, a concept that has traditionally been assumed to be clandestine. This would potentially open up a new dimension for studying backchannel diplomacy, and integrate it with wider debates in international relations and foreign policy analysis. Indeed, this theory may also be able to shed light on other forms of backchannel negotiations that occur within domestic politics or industry-related negotiations, as well as add to the wider debate on foreign policy and public opinion.

Practically, it may allow researchers and practitioners to detect the presence of backchannel diplomacy *before* the public announcement of the agreement. At present, backchannel diplomacy is often discovered retrospectively. If backchannel diplomacy does leave discursive traces however, a strong research and methodological framework that accounts for latent meanings and intersubjectivity may allow foreign or intelligence services to predict/detect the presence of backchannel diplomacy.

Overall, this chapter has shown that our current understanding of back-channel diplomacy remains unable to grasp its complexities. Although the international discourse of transparency and freedom has left backchannel diplomacy somewhat rhetorically side-lined, it remains an important tool tapped into by states, particularly between adversarial states attempting to mend relations. The limited information we have about back channels should not dissuade us from analysing it, but should prompt us to search for new angles and dimensions to study the phenomena. The theory proposed here is one such avenue for continued research into backchannel diplomacy.

Appendix A

List of discourses

Table A9.1

Identity 1: Seeking nuclear weapons

Key words/phrases: getting a nuclear weapon, nuclear programme not peaceful

Example:

- “Let there be no doubt: America is determined to prevent Iran from getting a nuclear weapon” (SOTU-12).

Explanation: An intention to obtain nuclear weapons. This is frequently implied in speeches about Iran. Often, no justification is given on whether the intention exists. Often cited in relation to US resolve to deny Iran this pursuit.

Identity 2: Threat

Key words/phrases: decreases security, endanger

Example:

- “The actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States ...” (EmgMar-12).

Explanation: Posing a security threat/danger. Iran is seen as endangering US/regional/global interest. It is sometimes assumed, and sometimes justified by Iran’s pursuit of nuclear weapons and support of “terrorist” organisations.

Identity 3: Isolated

Key words/phrases: united coalition against Iran, international community will act against, the world has seen

Example:

- “The degree of isolation they’re feeling right now – which is unprecedented ...” (Press-12).

Explanation: Cut-off and faced with a coalition standing against the state; the world against one. Emphasis is placed on the unity of the coalition against the isolation of Iran. This is frequently linked with sanctions (an “economic isolation”).

Identity 4: Restrict rights

Key words/phrases: denied opportunities, violates rights, denied basic freedom, accountable

Example:

- “Yet increasingly, the Iranian people are denied the basic freedom to access the information that they want ...” (Nowruz-12).

Explanation: Abuses/restricts various rights. This identity is simply stated without explanations. Obama uses this to justify sanctions, and accuse the Iranian government when addressing the Iranian people.

Identity 5: Violent

Key words/phrases: aggressive, state sponsor of terrorism, destroy Israel, dangerous

Example:

- “In Iran, we see where the path of a violent and unaccountable ideology leads” (UNGA-12).

Explanation: War-like and prone to the use of force. In Obama’s t_{-1} speeches, Iran is assumed to already be aggressive, and therefore should not be allowed to obtain nuclear weapons lest they become more aggressive.

Identity 6: Untrustworthy

Key words/phrases: bomb may end up in terrorist hands, stalling and avoiding issues (in talks), not serious, insincere

Example:

- “There is no doubt that over the last three years when Iran has engage in negotiations there has been hemming and hawing and stalling and avoiding the issues in ways that the international community has concluded were not serious” (Press-12).

Explanation: What the state says cannot be trusted or believed. Obama often associates this with nuclear negotiations, particularly Iran’s unwillingness to abandon its nuclear ambitions. At times, it is also related to nuclear weapons ending up in the hands of terrorists.

Identity 7: Rogue state association

Key words/phrases: (placed together with) al-Qaeda, North Korea, Syria

Example:

- “Of course, our challenges don’t end with al Qaeda.... The regime in North Korea.... Likewise, the leaders of Iran must ...” (SOTU-13).

Explanation: Iran is placed in the same group as other adversarial states/actors that the United States considers to be deviating from international norms. This reinforces Iran’s identity as an adversarial state.

Identity 8: Deceptive

Key words/phrases: misleading, distorted activities

Example:

- “Iran’s continued attempts to evade international sanctions through deceptive practices” (SanJul-12).

Explanation: Misleading the international community into believing something, when the true intention is something else. Similar to Identity 6, but focus is on illicit activities associated with bypassing sanctions. This is often the justification Obama uses for implementing further sanctions on Iran.

Identity 9: Regime

Key words/phrases: dictator, authoritarian, seeking own interest

Example:

- “The regime monitors computers and cell phones for the sole purpose of protecting its own power” (Nowruz-12).

Explanation: A term for government often used to describe authoritarian states, and implies a lack of popular legitimacy. Obama often uses this to describe Iran’s government at t_{-1} , but stops during the PMZ.

Situational framing 1: Largely Iran’s fault

Key words/phrases: regime’s unwillingness to compromise, not seizing the opportunity, open door for the regime to walk through, stubborn

Example:

- “Ultimately the Iranians’ regime has to make a decision to move in that direction, a decision that they have not made thus far” (IsrMar-12).

Explanation: Iran is to be blamed for the situation it is in. The stubbornness of Iran is often juxtaposed against the US willingness to negotiate and resolve the issue peacefully. The implication is that the United States is not at fault.

Situational framing 2: Contravene obligations

Key words/phrases: fail to meet obligations, shirking responsibilities, non-compliance

Example:

- “The [Iranian] regime’s continuing failure to fulfil its international obligations” (SanJan-12).

Explanation: Does not abide by existing international norms and obligations. Iran is often portrayed as breaking or not complying with the rules. These obligations and norms are rarely defined, and Iran is assumed to be breaking them through its nuclear programme.

Situational framing 3: United States versus Iran

Key words/phrases: Iran is a threat to the United States, we need to prevent them

Example:

- “And we will safeguard America’s own security against those who threaten our citizens, our friends, and our interest. Look at Iran ... America is determined to prevent Iran from getting a nuclear weapon ...” (SOTU-12).

Explanation: Adversarial relationship between the United States and Iran is emphasised. Iran is often portrayed as the antagonist that needs to be stopped by the protagonist – the United States (government) and its allies.

Situational framing 4: Advance nuclear programme

Key words/phrases: sophisticated, high-tech, short breakout time

Example:

- “According to the latest report from United Nations Inspectors, Iran has created computer models of nuclear explosions, conducted experiments on nuclear triggers ...” (NYT2012-1).

Explanation: Emphasis is placed on the sophistication of Iran’s nuclear programme, and how close it is to obtaining nuclear weapons. This is heavily emphasised in the sampled newspapers, but is absent in Obama’s discourse.

Situational framing 5: Iran weakened

Key words/phrases: crippled by sanctions, heavy pressure, economy failing

Example:

- “What we’ve been able to do over the last three years is mobilise unprecedented, crippling sanctions on Iran. Iran is feeling the bite of these sanctions in a substantial way” (Press-12).

Explanation: Iran’s capacity to operate and survive is portrayed as severely constrained and diminished compared to what it once was. Often used to highlight the effectiveness of sanctions on Iran.

Prescription 1: Diplomacy

Key words/phrases: peaceful means preferred, give diplomacy a chance

Example:

- “We prefer to resolve this diplomatically, and there’s still time to do so” (IsrMar-13).

Explanation: The proposal to use diplomatic means to get Iran to abandon its alleged pursuit of nuclear weapons. This often goes hand-in-hand with sanctions. Apart from some media sources, most sources portray diplomacy as the preferred means for persuading Iran to abandon its pursuit of nuclear weapons.

Prescription 2: Sanctions

Key words/phrases: crippling sanctions, sanctions effective

Example:

- “Sanctions are starting to have significant effect in Iran” (Press-12).

Explanation: The proposal to use further sanctions on Iran to pressure it to give up its nuclear ambitions. This is often seen as positive, and part of a wider diplomatic effort to stop Iran’s alleged nuclear weapons programme

Prescription 3: Military action

Key words/phrases: all options on the table, regime change, military strikes

Example:

- “And as I indicated yesterday in my speech, when I say all options are at the table, I mean it” (Press-12).

Explanation: The proposal to use military action on Iran. This option is never explicitly advocated by Obama, but is often implied. This option is not preferred. Some of the media see this as a tangible way of halting Iran’s programme, but most continue to see this option as disastrous or of last resort.

List of sources for discourse analysis

Table A9.2

<i>Title</i>	<i>Author/Director</i>	<i>Type</i>
2012 Iran Sanctions Test	–	Editorial
1 2013 How Iran Went Nuclear	David Feith	Editorial
ary 2012 Dangerous Tension With Iran	–	Editorial
ember 2012 Another Try at Nuclear Negotiations	–	Editorial
ist 2012 David Ignatius: Seeking to Cool War Fever Over Iran	David Ignatius	Editorial
ver 2012 A Red Line Iran Would Take Seriously	Michael Singh	Editorial
ist 2012 Argo	Ben Affleck	Movie
2013 ¹⁷ Red 2	Dean Parisot	Movie
<i>Title</i>		<i>Type</i>
<i>emarks at t₁</i>		
ary 2012 Statement by the President on Today		Press
ary 2012 Remarks by the President in State of the Union Address		SOTU
1 2012 Remarks by the President at AIPAC Policy Conference		US–Israel
1 2012 Remarks by President Obama and Prime Minister Netanyahu		US–Israel
1 2012 Press Conference by the President		Press
h 2012 Message – Continuation of the National Emergency with Respect to Iran		Congress
h 2012 Remarks of President Obama Marking Nowruz		Nowruz
2012 Message – Authorising Additional Sanctions with Respect to Iran		Congress
ember 2012 Remarks by the President to the UN General Assembly		UNGA
ver 12 Letter from the President regarding Authorizing the Implementation of Certain Sanctions		Congress
	Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions with respect to Iran	
nber 12 Notice – Continuation of the National Emergency with Respect to Iran		Congress
uary 2013 Remarks by the President in State of the Union Address		SOTU

<i>Code</i>	<i>Date</i>
<i>Popular sources</i>	
WSJ2012-1	31 July
WSJ2013-2	1 March
NYT2012-1	12 Janu
NYT2012-2	24 Dece
WP2012-1	21 Aug
WP2012-2	5 Octob
Argo	31 Aug
Red-2	18 July
<i>Code</i>	<i>Date</i>
<i>Obama's speeches and n</i>	
SanJan-12	28 Janu
SOTU-12	24 Janu
AIPAC-12	4 March
IsrMar-12	5 March
Press-12	6 March
EmgMar-12	13 Marc
Nowruz-12	20 Marc
SanJul-12	31 July
UNGA-12	25 Sept
SanOct-12	9 Octob
EmgNov-12	9 Nover
SOTU-13	12 Febr

Remarks during PMZ

March 2013	Message – Continuation of the National Emergency with Respect to Iran	Congress
March 2013	Statement by President Obama on Nowruz	Nowruz
March 2013	Remarks by President Obama and Prime Minister Netanyahu of Israel in Joint Press Conference	US–Israel
September 2013	Message to Congress – Iran	Congress
September 2013	Remarks by President Obama in Address to the United Nations General Assembly	UNGA
September 2013	Message to the Congress – Continuation of the National Emergency with Respect to Iran	Congress
September 2013	Readout of the President’s Meeting with a Bipartisan Group of Senators to Discuss Iran	Congress

- 12 The exception to this is in the coding of popular discourse. In this case, an identity is located if it appears in at least three sources from within the eight sources sampled.
- 13 To further substantiate this point, the Iranian people are *never* framed in these remarks as in conflict with the US government or its citizens.
- 14 I say partial because these events do not occur during the PMZ, but prior to it. Nonetheless, the concept is the same – events that could have been used to negatively frame Iran were not activated. This is in sharp contrast to the Nowruz remark of 2012.
- 15 Talks in February merely presented Iran with a proposal based largely off the proposal from 2012, resulting in little progress.
- 16 I did not use social media sources in this analysis, as I was unable to access the Twitter archive of the White House account, which reported the phone conversation. Twitter archives all tweets after the 3,200th tweet, allowing my access only till late 2013.
- 17 Although released during the PMZ, the production process from script writing to post-production often takes months if not years to complete, allowing it to be used for analysis as part of t_{-1} .

10 Cyber-intelligence and diplomacy

The secret link

Ashley Coward and Corneliu Bjola

Introduction

How can diplomats signal their displeasure with the foreign policy of a state, but without being able to state openly the reason for their grievance? They cannot follow the Wilsonian prescription of conducting diplomatic relations “frankly and in the public view” as that would require them to be transparent about intelligence sources and methods they may feel uncomfortable sharing. Nor can they convey their message privately through confidential channels as that would fail to allay domestic apprehensions or the concerns of key allies. By defying the traditional distinction between open and secret diplomacy, this intriguing puzzle calls attention to the demand for mixed forms of diplomatic engagement that can skilfully combine transparent and confidential features of communication. The objective of this chapter therefore is to unpack the nature of this combination but not as an exercise in abstract theorising, but in relation to an issue of growing practical relevance, which has been recently placed on the diplomatic agenda by the spread of cyber-intelligence operations.

The United Kingdom currently faces up to 120,000 cyber-attacks a day, equating to 44 million over the year (National Audit Office 2013: 6). Cyberwarfare is now also considered by a majority of American defence officials as the most serious threat facing the United States, even above terrorism, which ranks second (Fryer-Biggs 2014). Cyber-intelligence,¹ by which we refer to the use of web-based technologies for intelligence

purposes, has the potential to impose significant economic, political and security costs on the targeted states. It has been estimated that governments and consumers lose \$125 billion (USD) annually to cyber-attacks (Ackerman 2013), but these costs are often hard to assess. The intellectual property theft of the United States' F35 stealth fighter-jet programme undoubtedly had wider security implications beyond the alleged cost of \$300 billion (USD) (Greenberg 2012). The 2014 hacking of Sony Pictures Entertainment also had consequences beyond simply causing the cancellation of the planned release of "The Interview", a film that depicts the assassination of North Korea's Kim Jong-un. It raised social issues around the compromise of free speech, political issues as allegations were made against the North Korean government, and security issues as Sony employees' personal information was published and physical attacks were threatened on venues that aired the movie.

Cyber-intelligence operations (CIO) also attract significant media exposure when they come to light, thus posing significant repercussions for a state's reputation and diplomatic relations. Due to attribution difficulties, negative CIO publicity has the potential to affect the states allegedly involved, whether or not they are actually involved, and increase demand for diplomatic responses. For example, China's reputation is still negatively impacted by revelations about its GhostNet operation² even though the overrepresentation of Chinese IP (Internet protocol) addresses with malicious cyber activity might be explained by its being home to one-fifth of the world's Internet users (Deibert 2009: 9). However, due to the absence of international rules and the unique nature of cyber-intelligence operations, states usually respond informally, reactively and in an ad hoc manner. They are largely unwilling to name and shame, and officials seem reluctant to raise the issue with foreign counterparts in the same manner as they do other issues such as trade and aid.

The very nature of CIO and the fact that they are still a relatively new and conceptually underdeveloped issue poses a considerable new challenge for diplomacy. Unlike traditional espionage situations, cyber-intelligence operations are difficult to attribute to the responsible party and are not clearly defined in international law (Meyer 2012: 15). Designing a diplomatic response to such an activity, let alone a targeted or effective one, is a difficult

task. It is comparatively easy to design a suitable response to an incident covered by international law and wherein the activity, perpetrator and intentions are identifiable. For example, when a diplomat is accused of breaching the Vienna Convention of Diplomatic Relations by engaging in intelligence operations, she is generally declared *persona non grata* and expelled from the country. This situation is hardly applicable to CIO as the nature of the act, the identity of the perpetrator, and the legal framework are more difficult to discern. As states have few precedents or frameworks on which to model their response when it comes to cyber-intelligence operations, they are forced to react pragmatically to such situations by comparing the feasibility of the available options and carefully reflecting upon the appropriateness of the prospective course of action.

This chapter seeks to develop an analytical framework to explain *how and why states respond diplomatically to cyber-intelligence operations*. Such diplomatic responses are neither totally transparent, nor are they conducted in complete secrecy. They therefore challenge the traditional distinction between open and secret diplomacy as they pursue a mixed form of diplomatic engagement that combines both informal and formal signals. By identifying the scope conditions for the range of diplomatic responses to CIO,³ this chapter makes two important contributions to diplomatic studies. First, it bridges an important gap in diplomatic theory regarding the spectrum of positions that cover the functional space within which diplomacy is being conducted. In the age of instant global communication and diplomatic “WikiLeaks”, the distinction between secret and open diplomacy is losing analytical significance, a development that deserves conceptual and empirical attention. Second, the study advances an original conceptual framework for explaining the relationship between cyber-intelligence and diplomacy and for understanding how states can more effectively respond to cyber-intelligence transgressions in the future.

It will be thus argued that formal and direct diplomatic responses to cyber-intelligence operations are influenced by three pragmatic considerations: the degree of exposure of the incident in the public sphere, the nature of the relationship between parties, and concerns regarding the constraints the response might place on future actions. The nature and evolution of diplomatic responses to two critical types of cyber-intelligence

operations – sabotage and espionage – will be investigated through a dual case study of the Stuxnet worm in Iran and the collection of cyberespionage incidents attributed to China. These two incidents have had extensive public after-effects with major reputational repercussions for the states involved. The chapter is structured in three parts. The first section reviews the relationship between diplomacy and intelligence and discusses how CIO relate to this debate. The second part develops a framework for capturing the spectrum of diplomatic responses to CIO and the scope conditions under which they occur. Based on this, a set of hypotheses is formulated, which are then tested empirically in the third section through two case studies. The chapter concludes with a set of recommendations about how states can respond to CIO in a more informed, effective and proactive manner.

Theorising cyber-intelligence

Diplomacy and intelligence

Diplomacy and intelligence share a long and controversial relationship. When modern diplomacy was established in the fifteenth century as a permanent institution, the process of gathering secret information was considered an essential duty of diplomats and a mark of professional talent. As Wicquefort candidly put it, an ambassador was supposed to be “a messenger of peace on one side, and an honourable spy on the other” (Wicquefort 2004: 130). Machiavelli also noted that an ambassador derived great honour from the information he communicated to his prince. Mindful of this, his advice to a young diplomat was to carefully follow all the intrigues at the foreign court and to report them accordingly (Machiavelli 2004: 41–2). As discussed in greater detail in [Chapters 2 and 3](#) of this volume, the close relationship between intelligence and diplomacy explains why secrecy became the paradigmatic norm of modern diplomacy from its very early stages, as diplomats needed to find ways to protect their own secrets from third parties and uncover the secrets of others (Colson 2008).

Arguably, the degree of institutional bonding between diplomacy and intelligence is much weaker today than it used to be during the time of Wicquefort and Machiavelli for two distinct reasons. First, as Herman points out, the new technologies of the industrial revolution produced new forms of

war, the pre-planning of which required specialised knowledge of the technical and operational military capabilities of potential enemies. As a result, intelligence turned into a separate profession with its own specialised institutions (e.g. permanent military and naval intelligence departments), which collaborated but kept a distinct profile from diplomatic institutions (Herman 1998: 2–3). Second, the push for transparency and accountability of the “new diplomacy” after the First World War (Bjola and Kornprobst 2013: 30–1) forcefully challenged the secretive character of diplomacy and by extension, its intelligence connection. While the Wilsonian ideal that “diplomacy shall proceed always frankly and in the public view” (Wilson 1918) obviously still remains a work in progress, the prevailing assumption among academics and practitioners is that the relationship between intelligence and diplomacy has to be managed very carefully and if possible avoided. Otherwise, the credibility of intelligence services would suffer (Hicks 2005: 248), and most critically that of diplomats, whose main working asset is their reputation: the ability to be seen as truthful and reliable by their peers.⁴ Occasional collusions between intelligence operations and diplomacy are inevitable (Scott 2004), but as a former intelligence officer argued, covert action should not be used as the “lazy country’s way of avoiding hard diplomatic work” (Stempel 2007: 132).

It should also be noted that the relationship between intelligence and diplomacy does not only involve the collection and use of intelligence for diplomatic purposes. An equally important, although much less discussed aspect, relates to the nature of diplomatic reactions to controversial intelligence operations. In fact, the second dimension is often a direct consequence of the former. Diplomats cast their net widely in seeking information and they are usually careful about not infringing the laws of their host countries (Herman 1998: 7). However, the more governments are willing to use diplomatic assets for intelligence gathering, the more likely for diplomats to cross acceptable legal boundaries, and the more they need adequate diplomatic responses when such transgressions eventually go public. Revelations about the National Security Agency’s (NSA) programme of electronic surveillance of more than 122 foreign leaders, including of some of the closest US allies (Gallagher 2014), have created a series of diplomatic tensions for the United States. This prompted US president

Barack Obama to pledge to reform the NSA programme and to ban US eavesdropping on the leaders of close friends and allies (Holland *et al.* 2014). The NSA example thus raises the important question of how to handle public disclosures of cyber-intelligence operations so that further aggravation of diplomatic relations can be prevented.

Definitional issues

Diplomatic responses to cyber-intelligence operations are complicated from the outset as, like many “buzz words”, CIO lack a precise definition. It is difficult to determine the correct response to an activity that is not clearly defined and interpreted differently by states across the globe. As one author remarked “without a clear idea of what intelligence is, how can we develop a theory to explain how it works?” (Warner 2002). In response to this concern, an authoritative study of intelligence proposed to define the latter as the “mainly secret activities – targeting, collection, analysis, dissemination and action – intended to enhance the security and/or maintain power relative to competitors by forewarning of threats and opportunities” (Gill and Phythian 2012: 19). This definition emphasises the secretive character of intelligence activity (method), firmly delineates its security rationale (objective), and extends its scope of application to both state and non-state actors (target). At the same time, it says little about whether cyber-intelligence operations can be subsumed under the same rules or whether their features are somehow distinct from conventional intelligence activities and if so, how. In fact, governments approach this very question from different perspectives.

One approach is to subsume CIO under the more general umbrella of cyberwarfare, which as the term denotes, has a pronounced military profile. The five pillars of the US cybersecurity strategy focus, for instance, on cyberspace as a new domain in which to conduct warfare, emphasising the need to defend systems, be able to “hunt and attack” and the notion of collective defence (Garamone 2010). US Cyber Command (USCYBERCOM) has been established as the dedicated body for cyber defence and coordination for the military in the United States, but the security of public and private infrastructure and systems has been left to the Department of Homeland Security or private companies. Cyberwarfare is surrounded by a lexicon of martial and technical language (e.g. zero-day attacks, data

exfiltration, cyber doctrines, deterrence, distributed denial of service (DDoS) attacks, etc.), which reinforce the characterisation of cyberspace as the “fifth battlespace” alongside land, sea, air and space (Hughes 2010: 540). States have begun incorporating cyber departments into their militaries and governments, treating cyber as simply another element of national power (Nye 2011: 123). This militaristic emphasis may partly explain why, despite diplomacy arguably being a more fitting mode of response to an activity that blurs the line between war and peace, there has been little theorising on its interaction with cyberwarfare (Cornish *et al.* 2010: 18). State responses to the challenge of cyberwarfare have consequently focussed more on developing their own cyber military capabilities, as opposed to pursuing more open, and cooperative responses.

Another approach is to draw a distinction between the information gathering aspect of CIO and their military application. For example, the Chinese all-sector and information-based understanding of cyber-warfare is much broader in scope than that of the United States. It refers to: “A struggle between opposing sides making use of network technology and methods to struggle for an information advantage in the field of politics, economics, military affairs, and technology” (Kramer and Starr 2009: 466). To be sure, China has long identified cyberspace as the place it can successfully exploit militarily for asymmetric advantage (Inkster 2013: 57). It has also adopted a formal informational warfare strategy called the Integrated Network Electronic Warfare (INEW) that consolidates the offensive mission for both computer network attack and electronic warfare under the General Staff Department of the People’s Liberation Army (PLA) (Marvel 2010: 4). At the same time, Chinese CIO do not only serve a strategically deterrent purpose, but they presumably aim at obtaining high-tech information for economic advantage so that China can maintain its economy on a stable upward trend (Hjortdal 2011).

The issue of cyberespionage between the US and China illustrates the potential source of discord to stem from states having different expectations and interpretations of what is acceptable cyber activity. China’s information-orientated approach appears to justify pervasive cyberespionage from which the information gathered is leveraged to the advantage of all sectors. The United States’ military-oriented approach suggests that it sees CIO as having a more limited mandate that is predominantly confined to the

military realm. The United States may see the utilisation of national cyber power for military advantage as justified, whereas China's alleged use of such resources for the economic benefit of state-owned companies is not. While the United States is conducting cyberespionage of its own, it takes a more traditional view of espionage wherein state-gathered intelligence is only shared with the government, and not US companies (Healey 2013). While the United States may view such cyber activities as unfair and illegal, China may not and the disjoint in expectations makes a common response difficult.

Taking account of the above considerations, we define cyber-intelligence operations as: "Secret offensive actions taken to penetrate a state's informational network and technological infrastructure for the purpose of enhancing security and/or maintaining power relative to competitors, and/or defensive actions taken to deter, deny or protect against such attacks". Reference to both offensive and defensive action gives the definition sufficient depth to cover both the way in which states view CIO as a *pro-active* instrument of national security, but simultaneously recognises the *defensive* element of such activities as evidenced by increasing state attention to cybersecurity. At the same time, this definition allows us to explain why CIO require careful and sustained diplomatic responses as they could be much more damaging for the target state – physically, economically and politically – than conventional intelligence operations. For example, an act of cybersabotage, which may involve DDoS attacks that disrupt day-to-day operations on the low end of the spectrum up to attacks on critical infrastructure on the high end, could bring a country totally or partially to a standstill.⁵ Similarly, cyberespionage, which involves the targeted exfiltration of a specific piece of technology or the leveraging of information for political advantage, could lead to significant economic losses (Perera 2012) or sour diplomatic relations (Palmer 2013).

Challenges for diplomacy

Responding diplomatically to cyber-intelligence transgressions is problematic for three main reasons. First, there is the problem of *attribution*, which distinguishes CIO from more traditional forms of intelligence

operations. The inherent nature of cyberspace allows its users to operate with a high degree of anonymity, such that attributing cyber-attacks to a specific entity is difficult. Internet activity can be routed through numerous Internet service providers (ISPs) but even if ISP cooperation is gained to trace an attack back to a specific source or location, there is still the problem of determining who exactly was using the computer at the time or the possibility that the computer was a “botnet” (i.e. a compromised computer controlled by an unknown third party). Establishing culpability to an evidential standard of proof that is “beyond reasonable doubt” is thus difficult (Inkster 2013: 60), but critical since mistaken attribution can have serious diplomatic consequences. Attribution is further complicated by the involvement of non-state actors. With such ease of access to the Internet and the small amount of resources and sophistication needed to conduct cyber-attacks, individuals, criminals and hacktivists are active players in cyberspace. Crucially, the wide range of players and the difficulty of attribution combine to create plausible deniability, which allows states accused of cyberwarfare to simply ignore, deny or shift the blame to non-state actors without consequence. The ability of a victim state to formulate an effective and targeted diplomatic response in the face of such a dynamic is difficult.

Second, *international rules* for cyber-intelligence operations have yet to develop and there remains no predictability of behaviour in cyberspace. Recent calls for the establishment of such rules indicate that there is some recognition of the danger posed in allowing CIO to continue unchecked. The NATO-commissioned “Tallinn Manual on the International Law Applicable to Cyber Warfare” released in March 2013 (Schmitt 2013) is the most recent attempt, but generating support for a follow up international agreement has been more difficult. Bilateral initiatives such as the Cyber Shield deal between India and the United States (2011) and the US–Japan Cloud Computing Working Group (2012) are designed to partially fill this legal gap, but monitoring problems and ratification difficulties have hindered movement towards more widespread cooperation (Meyer 2012: 16). China has also sought to influence the developing norms and rules of cyberspace by advocating for state-led rather than civil society- or business-led Internet governance, a cyber industry code of conduct at the United Nations, and cyber security initiatives through the Shanghai Cooperation Organisation

(Sceats 2015). Governments are also likely to be reluctant to “unilaterally” limit their cyber operations through binding international agreements when a significant player in the cyber realm – non-state actors – do not sign them (Sanger 2012a: 266). Nevertheless, on the whole, states seem to benefit from “Wild West” characterisations of cyberspace wherein they can largely decide for themselves what “constitutes permissible action” (Andress *et al.* 2011: 4; Meyer 2012: 15). The absence of a “constraining political framework” makes cyberspace an attractive arena in which to pursue economic and political goals (Cornish *et al.* 2009: 38). Yet, a lack of international rules means there is no predictability of behaviour in cyberspace and cyber-intelligence transgressions are difficult to be held legally or diplomatically accountable.

Third, there is also the thorny question of *success*. Attribution constraints and a lack of shared rules make it difficult to locate potential culprits (who?) and to take non-military action against them (how?). However, even if these two conditions were not problematic, it remains unclear what diplomatic success means when tackling cyber-intelligence encroachments (to what end?). Ideally, one would expect a decline of hostile CIO over a certain period of time, but the result may be temporary or spurious. The danger in seeing a decline of hostile CIO is the possibility that the attacker has become more sophisticated and the victim simply less able to detect the more advanced attacks. However, there is the potential that a victim may actually experience a decline in the frequency of low-harm attacks, and as a result, have more time and resources to defend against less frequent but more high-harm attacks. That is, if they can be detected. As secrecy and invisibility are the ideal characteristics of CIO, it will always be difficult to measure the success of diplomatic actions taken against them when one may simply not be able to see the effect. And indeed, as long as CIO work under the assumption that cyber-attacks are cheap and cyber-defence is expensive, the attacker has little incentive to stop (Libicki 2009: xvi).

Overall, there remains no coherent framework for diplomatic responses to CIO and states are largely left to respond as they see fit. The United States has made clear, for instance, that it views computer network attacks as potentially amounting to an armed attack, which would trigger its international right to self-defence contained in the United Nations Charter (Koh 2012). Information security and the vulnerability of critical infrastructure have thus been met with a roll out of national cybersecurity

strategies across the globe. The United States released their first in 2003 (United States Government 2003), the United Kingdom and Australia in 2009 (UK Office of Cyber Security 2009; Australian Government 2009), and many other countries are in the process of doing so. Attribution constraints, a lack of shared rules and success uncertainty lead to an interesting puzzle: how do states respond diplomatically to cyber-intelligence transgressions in the absence of a shared platform for settling differences and how effective are these responses? The next section articulates an analytical framework for addressing this very question.

Diplomatic responses

Spectrum of diplomatic responses

The most common diplomatic response to conventional intelligence transgressions takes the form of a diplomatic protest accompanied by the expulsion of the alleged culprit and the withdrawal of her diplomatic status, often permanently by declaring her *persona non grata*. This response is not applicable to cyber-intelligence operations because of the difficulty of attribution. Due to the associated political risks, the diplomatic response to CIO is more likely to exhibit a degree of informality and indirectness unless attribution can be confidently established. The range of diplomatic responses to cyber-intelligence operations could be illustrated as a spectrum, from the informal to the formal (see [Figure 10.1](#)).

At the lower end of the spectrum is an *informal-indirect* response. This is akin to no response at all, such as a refusal to comment or acknowledge the incident or the decision to allow media speculation and public comments about the incident to go unchecked. It may also include a strategic press leak assigning responsibility for the incident, such as is alleged to have been the case with US involvement in Stuxnet (McCain 2012). There is certain incentive and strategic advantage to responding parsimoniously to a CIO incident because secrecy is what makes it so potent. States act as if they are almost “allergic” to the topic of offensive cyber capabilities because it is better for adversaries to not know what they are capable of (Sanger 2012a: 265). Cyber operations also lose much of their potency once they become public. “Zero-day” attacks are named thus because they exploit unknown

weaknesses in computer systems that will be patched once the attack and related vulnerability is known. Even a CIO victim can derive benefit from deploying an informal-indirect response and remain silent about the CIO attack. This could prevent the attacker from knowing how much damage has been caused or, in the case of a long-term operation, allow the victim to monitor the malicious cyber activity unbeknownst to the attacker. Once the attacker realises its operation has been detected, it will usually change its techniques and leave the victim in the dark about the next steps of the CIO.

Informal		Formal	
Indirect	Direct	Indirect	Direct

Figure 10.1 Spectrum of responses to CIO.

Moving along the spectrum is an *informal-direct* response, which might entail state officials signalling their displeasure with a particular cyber-intelligence operation. This type of response might take the form of retaliation in-kind accompanied by a range of comments denying responsibility for retaliatory CIO: flat denials, reciprocal claims of being a CIO victim itself or shifting blame to non-state actors. For example, it is alleged that the Shamoon virus which attacked state-owned oil company Saudi Aramco in August 2012, erasing data on three-quarters of the company’s computers and replacing it with images of a burning American flag, was planted by Iran as a demonstration of its cyber capability after the Stuxnet attack (Perlroth 2012). The “benefit” of this type of response is that it allows a state to do something – either retaliate or tentatively signal to an adversary that it is taking the issue seriously, without drawing overt scrutiny to its own cyber activities or inviting major consequences if it has directed its efforts at an innocent party.

Further along the spectrum is the *formal-indirect* response. This includes internal government reports, the passing of domestic law and official government statements calling for dialogue on cyber-intelligence operations with other parties. For example, the EU Cyber Security Strategy brought under one framework cyberspace issues affecting internal market, justice and home affairs, and foreign policy. It has thus offered a formal response to the challenge posed by CIO to EU institutions (Ashton 2013), but without targeting a specific state. Such a response is more likely to satisfy domestic

stakeholders that the issue of foreign cyber activities is being taken seriously. It also has the potential to extract a direct response from opposing parties and perhaps prepare the way for more concerted dialogue on the issue. However, formal-indirect responses might prove ineffective against parties who draw significant strategic or economic benefits from CIO.

Table 10.1 CIO response examples by type

<i>Informal</i>		<i>Formal</i>	
<i>Indirect</i>	<i>Direct</i>	<i>Indirect</i>	<i>Direct</i>
No comment.	Media comments: denial,	Official statements.	Direct accusations.
Let private sector name and blame.	victim claim, shift blame to non-state actors.	Signal need for dialogue on the issue.	Raise issue with counterparts.
Press leaks assigning responsibility.	Signal general importance of issue.	Internal government reports.	Sanctions.
	Retaliate in kind.	Change in domestic law.	High-level meetings.
		Shift in national policy.	Targeted policy shift in concurrent trade/aid negotiations.

At the upper end of the spectrum is the *formal-direct* response, which would likely involve a comprehensive and vigorous governmental approach. This might include official accusations against a particular state or individuals, raising the issue of CIO directly with foreign counterparts, high-level meetings, sanctions or possibly a targeted policy shift in concurrent aid or trade negotiations. Following accusations that the Chinese government was responsible for hacking attacks against American companies, the US State Department and the Chinese Ministry of Foreign Affairs agreed, for instance, to establish a joint cybersecurity working group in an attempt to defuse rising diplomatic tensions between countries caused by CIO (Sanderson 2013). If the problem of attribution is not unequivocally addressed, such a formal response entails great political risk and hence it is unlikely to be utilised on a frequent basis. Yet the advantage of this response is that it clears up some of the ambiguity that usually surrounds diplomatic responses so that both parties know exactly what is on the agenda. In 2013, the US took the unprecedented step of indicting five Chinese military officials on 31 counts of espionage for the purpose of gaining a commercial advantage over US firms such as Alcoa, US Steel and Westinghouse (Ackerman and Kaiman 2014). While the accused are unlikely ever to stand

charges in the United States, the indictment sends a clear and strong message to China in relation to a specific CIO that has not been seen until now. [Table 10.1](#) summarises examples of the responses found along the spectrum.

Explaining diplomatic responses

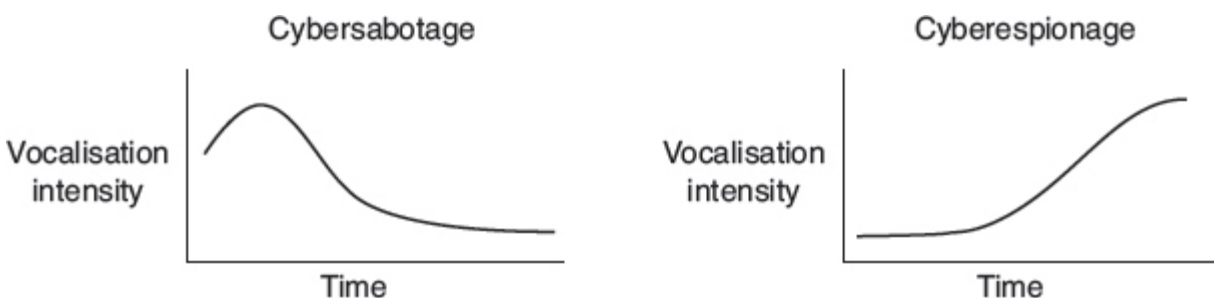
Having outlined the range of potential diplomatic responses to cyber-intelligence operations through the spectrum, the following conceptual framework will identify the scope conditions that determine movement along it. While CIO are a relatively new and unique phenomena in the international diplomatic environment, CIO that gain significant publicity such as occurred in the Sony hack will require states to respond. State responses will need to balance the public demand for action, the likelihood it does not know who the attacker is due to attribution problems, the possibility it may be conducting similar operations itself, and the resultant risk of adverse diplomatic reactions from the party they accuse. In short, a state's response will be significantly shaped by the unique nature of and the environment in which CIO are conducted. Our main argument is therefore that *public vocalisation about cyber-intelligence operations will encourage movement up the Diplomatic Response Spectrum (DRS), but that movement will be moderated by the value of the relationship between the states involved and consideration of the constraints that might be placed on future actions. The more valuable the relationship and the greater the perceived constraints on future action, the less likely for states to formalise their response to CIO.* We examine this thesis on the basis of three hypotheses.

Hypothesis 1: *Movement up and down the diplomatic response spectrum coincides with increases and decreases in public vocalisation.*

Diplomatic responses are likely to move along the spectrum in line with increases in public vocalisation. Vocalisation refers to the exposure of an incident in the public sphere, and is activated by the media and domestic actors through speculation, accusations, questions and demands for

government action. The idea is that vocalisation around an incident will reach a level such that it makes it difficult for the government to ignore the issue. For example, important stakeholders or constituencies within a country may succeed in putting and keeping CIO on the agenda until the government's non-response begins to affect its internal image, eventually making it untenable. Alternatively, domestic and international media vocalisation might reach such a level that it begins to affect a state's reputation, impact its international relationships or undermine the degree of trust they are based upon. This too would prompt movement up the response spectrum as the state seeks to ameliorate the effects through instruments of "damage control" or internal placation.

Vocalisation trends differ between cyberespionage and cybersabotage and this difference plays a key role in determining the type of diplomatic response in each case (see [Figure 10.2](#)). Incidents of cybersabotage are usually targeted in nature such that vocalisation is at its height in the months after an attack and then decreases as time passes. Cyberespionage is a far more prevalent and widespread activity such that vocalisation intensifies over time as the number of attacks accumulates. As such, vocalisation around cyberespionage could be expected to garner increasingly formal diplomatic responses over time. In contrast, vocalisation would become less of a factor in determining the type of diplomatic response in the case of sabotage over time; other factors such as the nature of the relationship between the implicated states or consideration of future action would come to have more bearing on positioning along the response spectrum.



[Figure 10.2](#) Vocalisation trends.

Hypothesis 2: *A valuable relationship between the implicated states will hinder movement up the response spectrum.*

Movement up the response spectrum prompted by vocalisation will be moderated by the nature of the relationship between the implicated states. A valuable relationship – politically, economically or strategically – will hamper the development of a more formal response to CIO because of the risk of jeopardising that relationship, especially when the problem of attribution remains unresolved. A victim state may find it difficult to balance this dual pressure: protecting the diplomatic relationship with the other party, while facing intense public vocalisation and domestic demands for a stronger response to cyber-intelligence transgressions. In such an instance, different levels of government might display responses from different positions along the response spectrum. The legislative level may act further up the response spectrum in order to placate public vocalisation, but the executive level may be more cautious and indirect in its approach so as not to put the relationship at too much risk.

A valuable relationship might also prevent movement into the uppermost tier (formal-direct response), unless a clear case of attribution can be made or public vocalisation becomes too intense. If the incident is deemed to be illegal and gains international condemnation, a victim party may be able to afford a more direct, public-shaming route even if there is a valuable relationship at stake. For example, despite the strong historical partnership between the United States and Europe, the mass electronic surveillance conducted by the NSA on European citizens triggered a formal and direct EU response, which called into question the future of various agreements between the two parties (European Parliament 2014). On the other hand, an undeveloped relationship between parties will have minimal impact on movement along the response spectrum. In such cases, vocalisation intensity and consideration of possible consequences for future action will likely have a stronger influence on how the response will be formulated.

Hypothesis 3: *Movement up the response spectrum will be hindered by consideration of the potential constraints on future action created by the response.*

Movement up the response spectrum is also moderated by considerations of what a more formal response might achieve and the constraints it might place on future actions and options. If a state was to respond more formally to a CIO incident, it is likely to attract greater scrutiny to its own cyber activities. There is little to be gained, for instance, from being identified as the author of an act of cyberespionage or for a victim to invite attention to the espionage it is probably engaging in itself. Cyberespionage enables a state to leverage information its adversary does not know it has. Secrecy is therefore what makes cyberespionage so potent and increased surveillance of one's cyber activities is undesirable. It could also result in the adoption of reciprocal formal responses against the state or damaging claims of hypocrisy. Nye (2010: 14) has pointed out such dangers in relation to US criticism of Chinese cyber intrusions in that although the United States may not be stealing intellectual property from China, it is undoubtedly employing the same or similar techniques for ends of its own.

Movement up the response spectrum is more likely to happen in the case of cybersabotage. For the alleged attacker there is something important to gain from movement up the response spectrum – credibility. He might be less opposed to response escalation if it results in him being attributed with the alleged attack and credited with the related technical capabilities (Libicki 2011: 137). This may enable the alleged attacker to develop some measure of deterrence, an idea hotly debated in relation to cyberspace. Deterrence relies on the ability to credibly threaten, which is undermined by attribution problems – it is hard to credibly threaten an unknown party (Lewis 2009: 4). While a carbon copy of traditional deterrence may not be transferrable to cyberspace, it nevertheless could work in some capacity. As Libicki (2009) states, any cyber-attacker must consider the chance of success against the likelihood of retaliation or punishment; it must make some calculation of the victim's forensic ability to attribute the attack and their ability and appetite for retaliation. These are difficult elements to validate but the resultant

ambiguity is essential for cyberdeterrence – if an attacker is unsure of how a victim will respond, they may be deterred. States already appear to be enacting Libicki's suggestion of neither having a deterrence policy nor ruling out retaliation. States have yet to publish response policies but are, for example, conducting simulated cyber “war-games” to practise and publicise their capabilities. The United States has been organising its Annual Cyber Defense Exercise for more than a decade now (Shalal-Esa 2013), and as one senior US intelligence official pointed out: “Everyone who needs to know what we can do, knows. The Chinese know ... [and the Iranians] are probably figuring it out” (Sanger 2012a: 269). Deterrence in cyberspace is still in the development stage but it provides a growing incentive for movement up the response spectrum.

Cybersabotage v. cyberespionage: a comparison of diplomatic responses

The viability of the DSR framework will be tested empirically in two case studies: the Stuxnet virus allegedly deployed by the United States against Iran's Natanz nuclear facility and alleged Chinese cyberespionage against the United States. The case studies will trace the evolution of the diplomatic responses between parties – denial, shifting blame, laying blame, tacit recognition – over time. Each case study will provide a summary of the incident itself and will compare the objectives and outcomes of the cyber-intelligence operation. The conceptual framework will then be applied to each case, examining the role of each of the three scope conditions in determining movement along the informal–formal response spectrum. The two cases cover the most common and important forms of cyber-intelligence operations, sabotage and espionage, and offer a good level of variance with respect to the three challenges for diplomatic responses discussed above: attribution, legal framework and success.

US involvement in Stuxnet was all but officially confirmed in 2012, but China has consistently denied responsibility for the cyberespionage acts committed against the United States despite strong circumstantial evidence to the contrary. Cybersabotage and cyberespionage also differ with regard to their positions under international law. As stated above, the international

community is currently more preoccupied with developing rules for high-impact incidents of cybersabotage (Cornish *et al.* 2009: 1). Although cyberespionage has the potential to exact significant economic and political costs on the target states, it is unlikely to be subjected to any particular constraints above those that already govern more conventional methods of intelligence-gathering (Meyer 2012: 16). The perceived rate of success in the two cases also remains doubtful. Stuxnet may have had the potential to seriously damage Iranian centrifuges and delay the Iranian nuclear programme, but evidence of the worm's impact has been circumstantial and inconclusive. By pointing out vulnerabilities in the Iranian system, Stuxnet may well have ended up as a net benefit to Tehran (Barzashka 2013). Cyberespionage acts attributed to China may have recently subsided in frequency, but recent studies reveal this conclusion may be misleading due to the growing sophistication of Chinese cyberespionage tactics (Nakashima 2014).

Cybersabotage: United States v. Iran

Summary of the incident

Stuxnet was a computer worm that targeted Siemens-manufactured supervisory control and data acquisition systems in use at Iran's Natanz nuclear facility. The malware caused the industrial machinery and equipment being run by those systems to malfunction and overwrote the warning systems that would have indicated that something was wrong. Stuxnet is alleged to have been the centrepiece of an operation codenamed "Olympic Games", which began during the Bush administration and was continued and stepped up by the Obama administration (Sanger 2012b). The operation initially sent beacons into the nuclear facility to map how the systems worked, after which the malware was constructed (Marks 2012). Much of the literature on Stuxnet has focused on the precision with which only the required centrifuges were targeted, leading some to conclude that the attack met the international humanitarian law requirements of distinction and proportionality (Richardson 2011).

Stuxnet came to worldwide attention in June 2010 when the worm was transferred onto a laptop that was connected to the Natanz systems. When that laptop was later connected to the Internet, the worm began replicating itself across the open web, treating the Internet like its own “little, private network” and attracting the attention of computer security companies (Sanger 2012a: 204). Iran, Indonesia and India accounted for the majority of infected computers but since 60 per cent of them were located in Iran it soon became clear who the likely target of the worm was (Falliere *et al.* 2011: 6). Once Stuxnet became public knowledge, a second and third version of the worm was launched to take advantage of the time remaining before the holes that Stuxnet exploited could be patched (Sanger 2012b).

Olympic Games was seen as an alternative policy for dealing with Iran’s nuclear ambitions (Nicoll 2011: 2). At the time, Europe was considering the effect sanctions would have on their own economies and the United States faced a credibility problem in raising alarm about another nation’s nuclear ambitions after the debacle of Iraq’s suspected weapons of mass destruction programme (Sanger 2012b). Olympic Games was thus designed to slow down the Iranian nuclear programme, buying time for either sanctions to take full effect or for diplomatic negotiations to be resumed. It was also viewed as a means of stalling Israel from engaging in a direct strike on Iran, which would have had serious regional implications and likely have caused Iran to rebuild the programme in a new and unknown location (Studer 2012; Sanger 2012a: 192). Assessments differ as to the extent of the setback caused by Stuxnet. Estimates range from the one to three year mark, with reportedly close to 1,000 centrifuges damaged by the third version of the malware (Sanger 2012b). Yet the International Atomic Energy Agency has also reported that levels of enriched uranium did not decline as a result of a speeding up of unaffected centrifuges (Sanger 2012a: 207). It is also not clear whether Stuxnet, by itself or in combination with sanctions, has prevented an Israeli attack or contributed to the resumption of international diplomatic negotiations.

Diplomatic responses

The evolution of responses to Stuxnet by Iran and the United States is presented in [Table 10.2](#).⁶

IRAN

Iran was initially reluctant to acknowledge that Stuxnet had penetrated its computer systems at all, most likely to hide the extent of the damage. Reports of computer malware targeting industrial control systems emerged in the media in June 2010 and speculation that Iran was the intended target began as early as July, citing high infection rates of Iranian computers and the pending opening of the Bushehr nuclear plant (Fildes 2010). Following reports that its nuclear plants had been affected in September 2010, Iran began escalating its response. At first it stated that only the computers of nuclear plant staff had been infected, but eventually Iranian officials conceded that Stuxnet had affected a limited number of centrifuges (Nicoll 2011: 1). Due to its technical sophistication, speculation that Stuxnet was state-sponsored had begun in September and over the latter months of 2010 the media started to take notice of the United States’ tepid response to Stuxnet in comparison to other states. With reports of the worm being previously at the Dimona complex in Israel, much of the speculation in early 2011 focused on Stuxnet being created jointly by the United States and Israel (Broad *et al.* 2011). Iran made its first concerted accusation against the United States and Israel soon thereafter, on 16 April 2011 (AFP 2011). In the following months, Iran focussed on the issue of improving security and reducing vulnerability to cyber-attack and hinted at the possibility of retaliation in May. However, its response gradually de-escalated. Little to no response was seen in June 2012 when US involvement in Stuxnet received an authoritative confirmation in the *New York Times*.

[Table 10.2](#) Diplomatic response evolution – Stuxnet

Actor	2010	2011	2012
Iran	June–October: reluctance to acknowledge impact of Stuxnet. November: acknowledgement of limited damage.	January: tentative accusations begin. April: concerted accusations made against the United States and Israel. May:	

		tentative discussion of retaliation.	
Media	June–July: technical reports issued by cybersecurity companies. August–December: speculation regarding the identity of the perpetrator begins. Tepid response of the United States noticed.	First quarter: speculation continues, focussed on the United States and Israel.	June: US involvement receives authoritative confirmation.
United States	Warnings about Stuxnet issued to general computer users by the Department of Homeland Security.	Questions of involvement deflected or ignored; focus put on the problem posed by CIO in general.	June: refusal to officially comment on the confirmation of US involvement. Claims of an official “leak” denied and intention to pursue the source announced.

Iran’s reaction to the Stuxnet CIO offers good empirical support for our analytical framework. With respect to *vocalisation*, Iran’s diplomatic response began on the low end of the informal–formal spectrum and it became more formal as public vocalisation around the incident increased over the period October 2010–April 2011. As expected, its response also deescalated after the peak in vocalisation in early to mid-2011. In the absence of a strong *relationship* with the United States, Iran’s direct accusations saw its response reach the uppermost tier of the response spectrum. It is reasonable to assume that had the relationship between Iran and the United States been more positive, let alone a strategically or economically valuable one, such a formal diplomatic response would have been more muted. As regards to consideration about *future action*, Iran’s non-response after confirmation of US responsibility in June 2012 is suggestive of a desire to avoid drawing attention to its own cyber activities. This becomes particularly compelling in light of Iran being associated with the Shamoon virus attack on Saudi Aramco two months later. While Iranian officials have denied responsibility for Shamoon (*Tehran Times* 2012), alternative credible accounts (Perlroth 2012) offer a reasonable confirmation of our third hypothesis.

UNITED STATES

For the first nine months after Stuxnet became public knowledge, the United States employed an informal-indirect response, with only the Department of Homeland Security issuing warnings about Stuxnet to general computer users. The tepidity of the US response soon started to attract media attention, especially in comparison to other international reactions (Mills 2010). Following increased media attention and direct Iranian accusations, the United States changed its approach to an informal-direct response in May 2011. When directly asked about the US involvement in Stuxnet, government officials refused to confirm or deny involvement or deflected such questions by discussing general issues associated with CIO (Williams 2011), or called attention to the recent release of the “International Strategy for Cyberspace” (White House 2011: 14). The United States moved down the response spectrum after the peak of vocalisation in 2011. The attribution of Stuxnet to the United States in the summer of 2012 (Sanger 2012b) might be seen as the only deviation from this. According to senator John McCain (2012), the publication of US involvement in Stuxnet was a strategic or “official leak” to make the president appear strong on national security, presumably before the general elections in the fall.

Facing minimal international backlash for its alleged involvement in the Stuxnet operation, the US government had little incentive to deviate from its initial approach of an informal-indirect response. Although nuanced, the US response did rise and fall in line with public demands (*vocalisation*) for a more formal response, a fact that confirms our first hypothesis. Particular pressure to move up the response spectrum appears to have been exerted by the more formal Iranian response in conjunction with significant public vocalisation in April 2011. [Figure 10.3](#) illustrates the correlation between vocalisation and the response formality of both the United States and Iran.

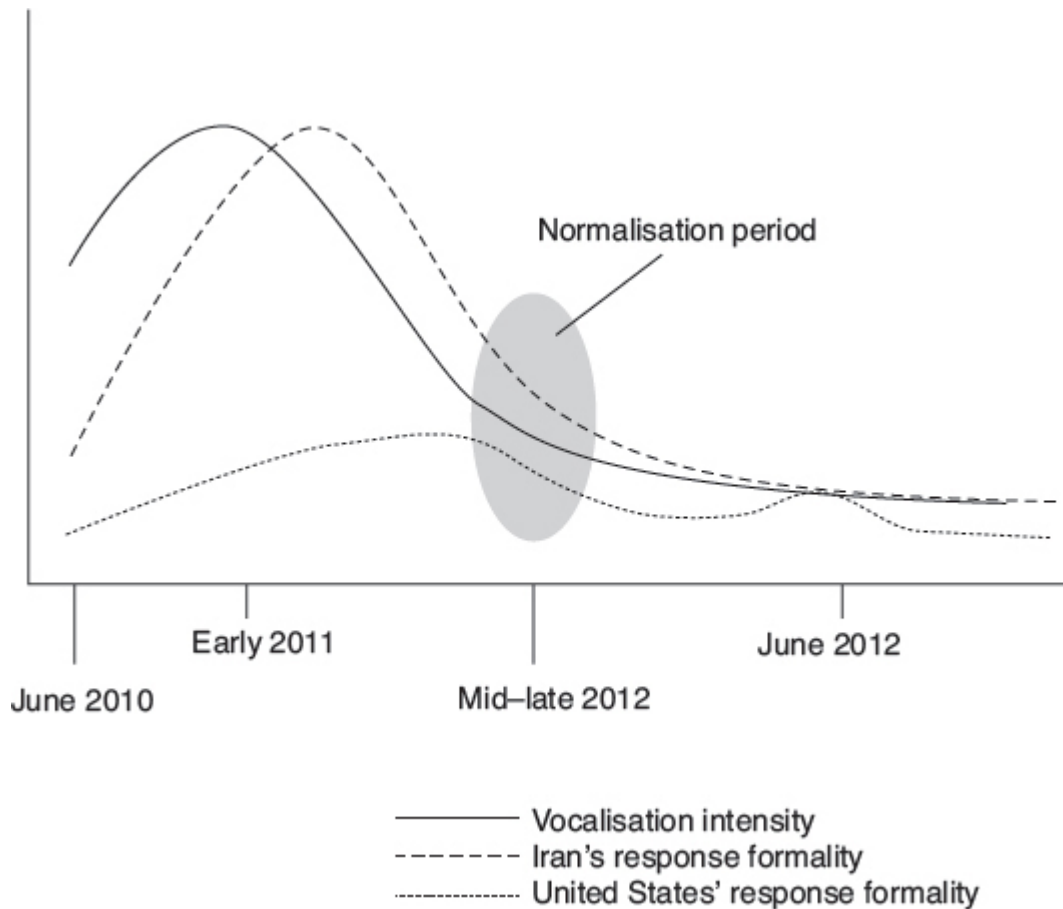


Figure 10.3 Vocalisation and response trends – Stuxnet.

In the absence of a positive diplomatic *relationship* with Iran, the US response largely coincided with vocalisation intensity and had little to do with concerns about possible Iranian reactions. Unless demanded so by vocalisation, the United States persisted with the informal-indirect response for as long as possible, most likely to avoid attracting further scrutiny to its cyber activities and to deny association with an action that might be considered an illegal use of force. This offers a moderate confirmation of our third hypothesis regarding the constraints formal responses might place on *future actions*. Yet confirmation of US responsibility for Stuxnet in June 2012, *if* it was a strategic leak as McCain alleges, shows a deviation from this policy. Aside from electoral considerations, the logical explanation for this leak might have been deterrence. Being recognised as the architect of the Stuxnet CIO entails being accredited with a sophisticated technological capability that can be deployed again, if necessary. Considering the low-level of concern shown by US officials for this major national security leak

in comparison to others (Kaplan 2013; McNeal 2012), the deterrence argument enjoys plausible validity. While the United States appears to have recognised the constraints on future action that might arise from it being attributed with Stuxnet, it also balanced these considerations against the benefit of deterrence, hence its move up the diplomatic response spectrum.

Cyberespionage: China v. United States

Summary of the incidents

Alleged Chinese cyberespionage against the United States began to receive concerted public attention in mid-2005 with the exposure of the Titan Rain attacks, although different sources indicate that sustained Chinese cyberespionage pre-dates this by two to five years (Thornburgh 2005). A few notable incidents are detailed below.

TITAN RAIN (GOVERNMENT)

Titan Rain is the designation of a series of attacks since 2003 that have been aimed at US government targets, such as the Pentagon and various military contractors. The attacks emanated from China and reportedly exfiltrated large amounts of highly sensitive data (Thornburgh 2005).

F35 JOINT STRIKE FORCE PROGRAMME (MILITARY)

Information regarding the F35 Joint Strike Force Programme was stolen through cyber-attacks on US defence contractors such as Lockheed Martin in 2009 (Gorman *et al.* 2009). The penetrations were traced back to Chinese ISP addresses and the coincidence of China revealing its first stealth fighter (J20) less than two years later has been taken by many as confirmation of the perpetrator's identity (*The Economist* 2012).

AURORA (COMMERCIAL)

Valuable and commercially sensitive information was exfiltrated from 34 companies in the high-tech, defence and financial sectors in 2009. The penetrations were traced back to Chinese ISP addresses, including a

university with alleged ties to the Chinese military (Perlroth 2013). Google, Adobe and Northrop Grumman were among those targeted, but it was Google who uncovered the attacks and made public accusations against China in 2010, threatening to pull its operations out of the country (Nye 2010: 13). The Gmail accounts of Chinese human rights activists had been compromised and Google source code – related to the Gaia/Single-Sign-On password system that controls millions of users’ access to Google services – had been stolen (Markoff 2010).

The targeting of a wide range of actors and sectors is consistent with the reported Chinese definition of cyber-intelligence wherein an information advantage is sought across the fields of politics, economics, military affairs and technology. The range of high- and low-value targets suggests a tendency to set the “net” wide in the hope of either obtaining a valuable piece of information such as the F35 stealth technology, or leveraging large amounts of information in order to create something valuable. An example of such might be attempts to create “human-network linkages” by scoping out the computers and email accounts of prominent people in Congress, think tanks and other sectors to deduce how the US government thinks or makes decisions (Timberg and Nakashima 2013). While some analysts have estimated that 10–20 terabytes of data had already been exfiltrated from US government networks by 2007 (Krekel 2009), determining the value of the intelligence so obtained is problematic. Intelligence agencies around the world have always faced the same problem of wading through copious amounts of information to find something of value (Timberg and Nakashima 2013).

Diplomatic responses

A summary of the evolution of responses to alleged Chinese cyberespionage is presented in [Table 10.3](#).

UNITED STATES

In the period 2005–2008, US public vocalisation against Chinese CIO was minimal. The 2008 US–China Economic and Security Review Commission’s (USCC) Report to Congress only briefly flagged the threat posed by China’s

pursuit of cyber capabilities. The first escalation in the US diplomatic response was seen in the period 2009–2012, during which China’s responsibility for cyber-attacks become more visible as CIO incidents mounted up (Inkster 2013: 59–60). The US Executive Branch refused to accuse China specifically and instead offered an informal-direct response by commenting on the seriousness of cyberwarfare and the importance of cybersecurity in general. The US Legislative Branch acted further up the spectrum, with officials and internal reports becoming more assertive in attributing China as responsible for the cyber-attacks (Beech 2013). The Northrop Grumman (2009) report to the USCC made the case for Chinese culpability by contrasting the “patient, long-term approach” of the attacks emanating from China with the usually “quick and opportunistic” approach of criminals (Inkster 2013: 60). The language around Chinese cyberespionage also gradually escalated in the USCC’s annual reports to the US Congress, from addressing the Chinese *origins* of attacks in 2009 to the *cyberespionage mandates* of the PLA and intelligence branches in 2012.

Table 10.3 Diplomatic response evolution – Chinese cyberespionage

<i>Actor</i>	<i>2005–2008</i>	<i>2009–2012</i>	<i>2013–2014</i>
Private sector	General reluctance to publicly name and shame.	Vocal in accusations; direct public accusations made by Google (2009).	Vocal in accusations; significant public accusations made by computer security companies and numerous news agencies; Mandiant Report and Novetta’s Axiom Report released.
Legislative branch		More willing to voice public frustration with Chinese cyberespionage; internal reports flag the increasing seriousness of Chinese cyberespionage.	
Executive branch		Commentary only on <i>general</i> issues of cyberespionage.	Raises the issue of Chinese cyberespionage publicly; passes cyberespionage ICT law;

indicts five Chinese
military officials.

China

Consistent denial,
counter-claims and
reassurances.

Escalation in response
tone; reiteration of non-
involvement.

The US response escalated into the formal-indirect tier of the response spectrum in the wake of particularly acute vocalisation in the early part of 2013. By January there was a growing list of US news agencies, such as the *New York Times*, *Washington Post* and *Wall Street Journal*, which claimed that Chinese hackers had breached their systems to monitor reporting on Chinese officials and internal matters (Timberg and Nakashima 2013). Then in February, cybersecurity firm Mandiant released the 72-page report “APT1 – Exposing One of China’s Cyber Espionage Units” (2013). It detailed and attributed the theft of hundreds of terabytes of data from 141 companies since 2006 to Unit 61398 of the PLA, and stated that it was “likely government-sponsored” (Mandiant 2013: 2). Hillary Clinton also indicated some tentative movement up the response spectrum in early February by stating that cyberespionage would be raised to the “strategic dialogue level” with China (Fisher 2013). National security advisor Tom Donilon (2013) also made clear that cyber intrusions emanating from China had become a priority issue. The US response further settled into the formal-indirect tier with the announcement of USCYBERCOM’s 13 new *offensive* cyber teams to “defend the nation” soon thereafter (Carr 2013). A spending law was also passed in late March 2013, prohibiting NASA and the Justice and Commerce Department from purchasing Chinese-made information and communication technology (ICT) products without prior approval, in order to avoid the risk of purchasing compromised goods. In 2014, movement into the formal-direct tier was seen when the US Justice Department indicted five Chinese officials for espionage by cyber means. The “Axiom Report” was then released in October 2014 by a coalition of cybersecurity firms and detailed the characteristics of a threat actor group operating out of China and believed to be directed by Chinese intelligence services. The report sought to go further than Mandiant’s 2013 report by detailing methods to *disrupt*, and not just analyse, malware used by threat actor groups.

In line with our first hypothesis, the US response formalised as *vocalisation* intensified. As Donilon remarked in his statement, increasing concern expressed by US businesses had to be taken seriously, hence the need for a more formal response. The choice of a formal-indirect response soon after the release of the Mandiant Report is also indicative of the fact that internal vocalisation had by then reached a critical threshold. Response escalation was slow and stopped short of the formal-direct tier, providing evidence in support of the second hypothesis. In the absence of a valuable bilateral *relationship* and with such levels of concurrent vocalisation, it is unlikely that China would have been spared a formal response for as long as it did. The strategic and economic value of the US–China relationship explains why the United States, despite having sufficient evidence to challenge Beijing, instead preferred, as Feith (2013) put it, to treat China like the “Lord Voldemort of geopolitics – the foe who must not be named”. The opposing pressure enacted by the perceived value of this relationship also explains the split between the Legislative-and Executive-level responses. Legislative officials were in a better position to formalise their responses as demanded by vocalisation without seriously putting the US–China relationship at risk.

Despite Feith’s (2013) belief that Washington had sufficient evidence to challenge Beijing long before 2013, the US response only broached the formal-direct tier in mid-2014 when indictments were issued for five Chinese military officials. This is suggestive of an initial attempt to balance the short-term need to respond more concertedly with consideration of constraining *future action*, in line with our third hypothesis. A formal-indirect response – such as through the announcement of offensive cyber teams to defend the nation – enabled the United States to take account of public vocalisation and challenge China without overtly antagonising it or drawing significant attention to US offensive cyber activities. The danger of moving into the formal-direct response tier was that it might invite claims of hypocrisy when US responsibility for Stuxnet had received all but official confirmation, or constrain the United States by requiring it to reciprocate and state what activities it would crack down on itself (Nye 2011: 141–2). While the mid-2014 indictments eventually signalled movement into the formal-direct tier, it should be noted that they were concertedly explained as a crackdown on cyberespionage that had been committed for *commercial*

advantage (US Department of Justice 2014). While spying for security purposes is considered by most states as an accepted and almost expected activity in the international environment, the United States has emphasised that it views spying for commercial advantage as illegitimate (Ackerman and Kaiman 2014). This may explain why the United States seemed comfortable to enter the formal-direct tier – it is not risking claims of hypocrisy and constraints on future action when it is not conducting such activities. This is somewhat in line with our third hypothesis considering the rather muted Chinese response and lack of expected counter-claims regarding US conduct of commercially oriented cyberespionage.

CHINA

China has exhibited a consistently informal diplomatic response to accusations of cyberespionage over the years. The typical response includes a firm denial of involvement in any cyberespionage activities, supplemented by one or all of the following:

- Dismissal – stating that there is no evidence of its involvement and that such accusations are groundless.
- Counter-claim – invoking its status as a victim of cyber-attacks.
- Reassurance – stating that it abides by international rules, does not support computer hacking and is open to international cooperation on the issue.

The following news report offers an example of a typical Chinese response (emphasis added):

“Anyone who tries to *fabricate* or piece together a *sensational story* to serve their political motive will not be able to blacken the name of others or whitewash themselves” Yang told reporters at an annual news conference held on the sidelines of the national legislature’s annual session. “We hope the relevant parties will stop *irresponsible attacks or accusations*”. China’s Defense Ministry has also poured scorn on the accusations and *denied ever supporting hacking attacks*. It issued its own *counterclaims* last month, saying that overseas computer hackers targeted two of its websites on an average of 144,000 times per month

last year, with almost two-thirds of the *attacks originating in the United States*.

(*Japan Times* 2013)

In March 2013, the Chinese response moved up the spectrum into the formal-indirect tier when officials described the US IT law as a form of “discriminatory practice of presumption of guilt” (Rajagopalan 2013) and stated that continued US accusations of cyber-spying would “render future bilateral discussions unproductive” (Gertz 2013). The more formal response also focussed on the dynamic of hypocrisy, with China’s reciprocal status as a victim of cyber-attacks *from* the United States being emphasised and supported with statistical evidence (*Xinhua* 2013). Movement up the diplomatic response spectrum coincided with increasing public *vocalisation*, thus providing strong confirmation of our first hypothesis. The Chinese reaction became more vigorous after the release of the Mandiant report and the subsequent formalisation of the US response, both developments having a potentially negative impact on China’s international reputation. The Chinese response somewhat escalated when it lodged a formal complaint with US authorities in relation to the indictments of its military officials, but overall it remained largely direct and informal with the usual denials issued by the Foreign Ministry. [Figure 10.4](#) illustrates the correlation between vocalisation and the response formality of both the United States and China.

China is clearly aware of the role played by its bilateral *relationship* with the United States in hampering a more formal and direct diplomatic response from the US government. The statements of Chinese officials’ about the US ICT law sending the wrong signal and damaging the “mutual trust” between the two countries sounded more like a reminder to the United States of the value of their relationship and of the risks that an increasingly formal response could pose to it (Rajagopalan 2013). China’s determination to deny responsibility for cyber-attacks against the United States in the face of increased vocalisation is consistent with our third hypothesis in that there is little to gain for *future actions* from response formalisation in the case of cyberespionage. A focus on raising the dynamic of hypocrisy is also suggestive of an attempt to forestall or discourage the escalation in the US response by reiterating that it will only invite unwanted reciprocal attention to US cyber activities. China does appear more comfortable in taking

formal-direct actions on the international stage as indicated by, for example, strong denouncements of cyber incursions on state sovereignty at the Human Rights Council in September 2014 (Sceats 2015). However, such actions are less likely to draw unwanted attention to its own cyberespionage activities when not directed at a particular state.

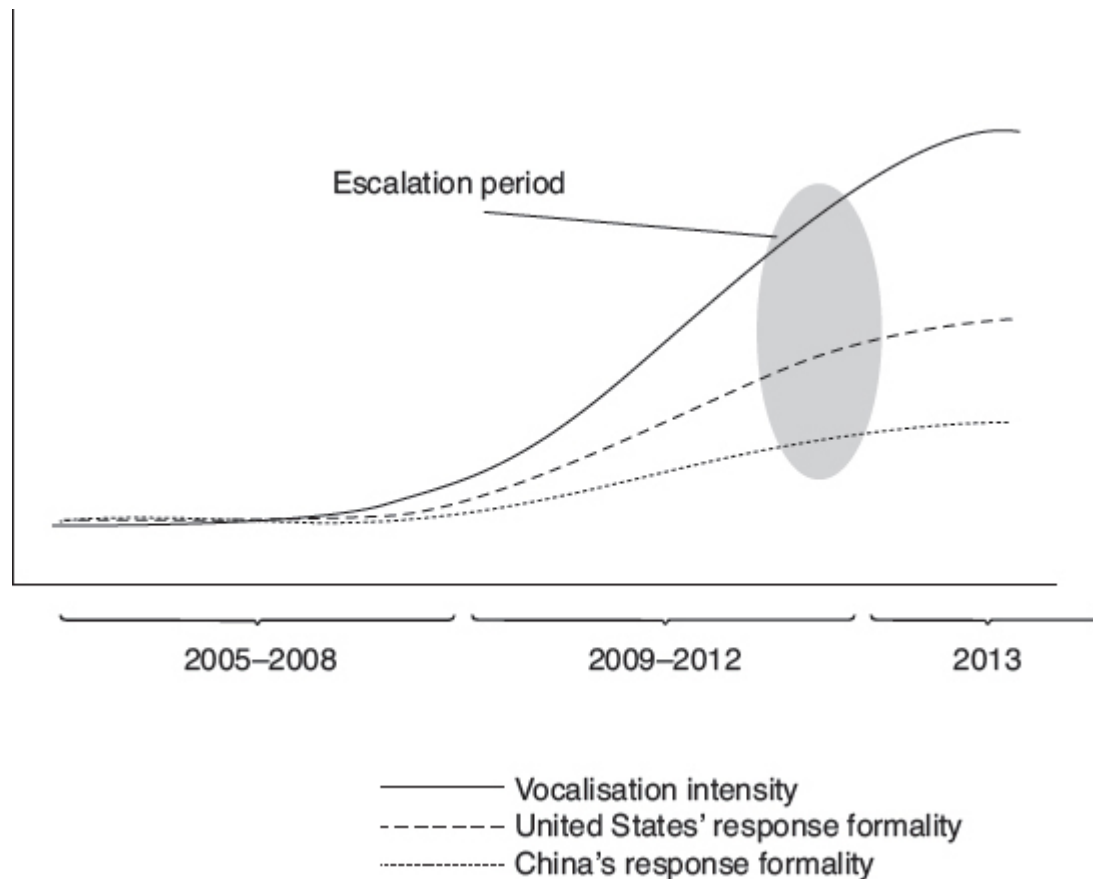


Figure 10.4 Vocalisation and response trends – Chinese cyberespionage.

Conclusion

By requiring both formal and informal interventions, diplomatic responses to cyber-intelligence operations challenge the traditional distinction between open and secret diplomacy. Official accusations and media speculation often follow cyber incidents when they come to light and these public after-effects can have serious reputational repercussions for states. Yet, cyber-intelligence is still a new and underdeveloped concept and there are few precedents on which to model diplomatic responses. Attribution difficulties make targeted

and confident diplomatic responses difficult. In the absence of a defined response framework, states have exhibited a range of formal and informal responses that appear to be ad hoc and reactive in nature. Success in addressing cyber-intelligence encroachments is also difficult to assess. This chapter articulated a diplomatic response framework by examining the scope conditions of informal and formal responses to CIO. An understanding of how and why states respond diplomatically to CIO enable states to (a) be better prepared to respond to and manage the consequences of incidents they are implicated in, and (b) more proactively instrumentalise their diplomatic responses to achieve desired outcomes, as opposed to simply reacting to incidents as they arise.

It was thus argued that public vocalisation would encourage movement up the diplomatic response spectrum, but such movement would be moderated by the value of the relationship between the states involved and consideration of the constraints that it might place on future actions. The two case studies confirmed that more formal diplomatic responses were prompted by increases in public vocalisation. Response formalisation on behalf of the victim of CIO also appeared to exert particular pressure on the alleged attacker to move up the response spectrum itself. What this suggests is that the efficacy of relying solely on a policy of denial is somewhat diminished in the face of public vocalisation. While such a policy prevents legal culpability and should essentially allow a state to ignore accusations of cyber transgressions, it does not prevent the media and public sector from inflicting reputational repercussions on states. The case studies also confirmed that movement along the response spectrum is moderated by the relationship between the states involved. The risk of antagonising a valuable relationship due to attribution problems serves as a barrier to response escalation. The case studies also moderately confirmed that consideration of future action restrains response formalisation, more so in the case of cyberespionage.

The diplomatic response framework outlined in this chapter could enable states to more proactively and strategically respond to CIO incidents, as opposed to simply reacting to them. For example, whilst considering the potential constraints on future actions and the consequences for its relationship with another state, the party exposed to a cyber-transgression might escalate its response up to the formal-indirect tier to increase the

reputational costs for the alleged attacker (Klimburg 2011: 54). This could encourage the latter to respond more formally and take the accusations more seriously. It might also provide some incentive for both parties to crack down on cyber-attacks conducted by private actors from within their own territory, since they will incur reputational costs regardless of whether they directly sponsored or condoned the attacks. Alternatively, when both parties enjoy a valuable relationship, they may want to take up the issue in a more private forum before public vocalisation becomes too intense and formal escalation harder to avoid.

Notes

- 1 As a term of reference, we prefer to use “cyber-intelligence” instead of “cyber-warfare” due to the more neutral connotation of the former. We will preserve the cyberwarfare term when it is so mentioned in the literature.
- 2 GhostNet, discovered in 2009, was an extensive cyberespionage operation based out of China directed at high-value targets such as foreign embassies and government and media offices.
- 3 For the purposes of this chapter, *informal* refers to a range of actions that are unofficial in nature and occasionally unattributable to a specific national government; *formal* refers to a range of official, public and attributable actions taken by a national government.
- 4 According to documents produced by Edward Snowden, the National Security Agency (NSA) encouraged senior officials in the White House, State Department and the Pentagon, to share their “Rolodexes” so the agency could add the phone numbers of leading foreign politicians to their surveillance systems. One US official handed over 200 numbers, including those of 35 world leaders, who were immediately “tasked” for monitoring by the NSA (Ball 2013). Following this case, one would expect diplomats to be more cautious about sharing contact details with their peers.
- 5 In 2003, a software bug caused the failure of a monitoring system at an Ohio utility company, taking 256 power plants offline and leaving 55 million people without power (Andress *et al.* 2011: 126). While it was an accident, it illustrates the level of destruction that could result from an act of cybersabotage.
- 6 Table 10.2, Table 10.3, Figure 10.3 and Figure 10.4 have been constructed from research of mass media and publicly accessible sources dating from June 2010 to June 2014. Timings are indicative.

Conclusion

So, does secret diplomacy still “work”?

Stuart Murray

Introduction

After literally framing secret diplomacy this concluding chapter briefly summarises the findings of each of the previous chapters. It then relates these to the aims, questions and analytical framework raised at the outset of this book. For those interested in further theorising on the role secrecy plays or ought to play in diplomacy and international relations research gaps and recommendations to policymakers are also suggested.

This final chapter also relates to a common trend in diplomacy: the friction caused by changes in its operating environment, particularly the transgression from one era to another; the clash between the “old” and the “new”, in other words. This juxtaposition between tradition and change is present in all periods of diplomacy, and the post-Cold War diplomatic environment is no exception. Contextualising the book’s chapters against such a backdrop facilitates a neat return to the core question we posed at the outset: in the digital age with its emphasis on openness and transparency, does secret diplomacy still work or are we witnessing the “end of secrecy”?

Framing secret diplomacy

Hans Holbein’s 1538 painting *The Ambassadors* is a favourite among diplomatic scholars, young and old. It adorns the cover of Cesar Villanueva’s PhD thesis *Representing Cultural Diplomacy*, Costas Constantinou devotes the opening chapter of his 1996 book *On the Way to Diplomacy* to it, and there was even a paper presented on the painting at a 2015 Workshop on

Science and Diplomacy.¹ Although over 500 years old, *The Ambassadors* continues to appeal to scholars as it offers powerful metaphors when writing or thinking about old and new aspects of diplomacy. The painting is particularly appropriate to the topic of this book: secret diplomacy.

Like the public and private worlds of diplomacy, *The Ambassadors* presents the observer with many obvious and hidden paradoxes. It would appear, for instance, that Holbein was commissioned to capture two rich, worldly men – Jean de Dinteville, the French ambassador to England in 1533 and his friend, Georges de Selve, Bishop of Lavaur – at the height of their powers. Yet, the patronage remains a mystery, two full-length figures are depicted (most portraits of the time were of a single person), and many bizarre objects are strewn throughout: celestial and terrestrial globes, a portable sundial, a hymn book, a case of flutes, and, of course, the bizarre anamorphic skull slashed across the base of the canvas.² The painting also contains many secret symbols: a crucifix in the top left corner half-obsured by a green curtain, a lute with a broken string (perhaps a symbol of discord between the Church and capitalism), and an arithmetic book which opens with the word “dividirt” (loosely translated from Latin as the word “division”). And, significantly, *The Ambassadors* alludes to a period of great change, flux and turmoil in diplomacy: in this case, the tension between the ruling and the rising merchant classes, the waning of the Catholic’s church’s Medieval Aspiration of Universality against the rise of “radical” forms of worship during the Reformation, the schism between Henry VIII and Rome, disharmony, discord and division, and so on. It is little wonder that diplomatic scholars adore Holbein’s masterpiece. The painting suggests that when thinking of diplomacy first appearances and general impressions can be deceptive, that tension is created when the “new” clashes the “old”, and that there is a duality inherent to diplomacy. The “dialogue between states”, many insist, is utterly Janus-faced (Watson 1982: 3). In other words, diplomacy has two faces – an obvious, public aspect that is *always* juxtaposed with a secret, hidden one.

Since the sixteenth century when *The Ambassadors* was painted, the themes captured by Holbein have played out time and time again in the evolution of diplomacy: Wilson’s famous call for “open covenants, openly arrived at”, made in between a break in the Versailles negotiations, which

were held in the utmost secrecy; Daniel Ellsberg's noble leaking of the Pentagon Papers in 1971, which only prompted greater government secrecy around sensitive information relating to the Vietnam War; and, in the information age, Blair, Rumsfeld, Bush, Obama, etc. saying one thing publically yet doing quite the opposite privately. Regardless of the epoch or actor, a common theme emerges when thinking of the secret/public discourse: a dramatic "new" change occurs in society but diplomats are too archaic, elitist, secretive, traditional, ossified and "dead" to effectively address, explain and profit from that change (Ramsay 2006: 273).

The post-Cold War diplomatic environment has generated similar paradoxes for diplomacy. Through, for example, flashy public and digital diplomacy platforms many states insist that diplomacy has never been more relevant, yet they continue to slash the budgets of their Ministries of Foreign Affairs (MFAs) with impunity. Over the last 20 years or so, diplomacy has enjoyed a halcyon moment and yet the world is brimming with all sorts of intractable conflicts. If, the layman may ask, the "business of peace" actually worked then why is the world coming apart at the seams (Satow 1957: 1)? And, in the digital era with its emphasis on transparency, how can the public and secret realms of diplomacy co-exist? Surely, in zero-sum terms, they are antithetical? On the one hand, MFAs are reaching out to publics at home and abroad in ways never thought imaginable yet, on the other, diplomats continue to play the parallel, centuries-old "game" of intrigue, cabal, flattery and cajolery in rarefied, secret, grand old palaces closed off to the public.³ In such a context the question "does secret diplomacy still work?" takes on heightened importance. As Sharp (2011:23) notes, "there may have been easier times for studying diplomacy, but there never have been better or more interesting ones".

Theorising secret diplomacy

In this book the complexity described above became apparent when trying to define its key term: secret diplomacy. Adopting a statist lens – the "view from the embassy window", if you like – most authors agreed that secret diplomacy is the intentional isolation and/or exclusion of the media and the public from sensitive diplomatic affairs (Wilson 1962: 122). For most, secret

diplomacy still “works”. It continues to serve diplomatic utility, particularly in intractable relations between adversarial states. In terms of its essence, however, the authors in [Part I](#) approached the task of defining secret diplomacy quite differently.

For Stuart Murray, a modern understanding of secret diplomacy was incomplete without considering secrecy in the context of the history of relations between estranged political entities. Secrecy must be theorised in relation to the basic functions of a state, none more so than survival by *any* means possible. Despite the emergence of techno-libertarians such as Julian Assange, states remain wedded to secrecy. So long as there are states there will be a need for diplomacy; and so long as there is diplomacy, secrecy will endure.

In the second chapter, Paul Sharp argued that the key to understanding secret diplomacy lay in the “classic texts”, those venerable tomes written decades prior by former diplomats such as Sir Harold Nicolson and Sir Ernest Satow. After closely scrutinising these works, Sharp introduced a tripartite model for better understanding secret diplomacy: Strategic Secrecy (secrecy about the contents of negotiations, the contents of agreements, and the fact that agreements have been reached), Operational Secrecy (the intentional concealing of information in the course of other sorts of diplomatic relations besides negotiations), and Official Secrecy (where something is known but not acknowledged as such). For Sharp, the making, sharing, keeping and discovering of secrets will endure in the ambit of professional diplomacy despite radical changes in ICT since the end of the Cold War.

Illustrating one of the book’s key aims – to showcase different research programmes and views on secrecy – Marcus Holmes reasoned in the third chapter that to truly understand why states continue to practise secrecy the observer must first steep themselves in psychology, particularly social neuroscience. To reconcile the many psychological aspects of secret diplomacy, Holmes introduced the term “secrecy diplomacy”. Through a number of lively case studies, this chapter concentrated on a specific aspect of secrecy diplomacy – the interactions between heads of states, which, the author claimed, differs markedly from private or clandestine diplomacy. For Holmes, secrecy, particularly at the individual level of analysis, is a

ubiquitous practice in international politics, just as it is in everyday social life.

In the fourth chapter, Karsten Jung postulated that the best way to theorise on secret diplomacy was through an analysis of its practice, particularly through a study of the re-emergence of Concert Diplomacy. With a focus on high-profile issues, exclusive membership, emphasis on secret negotiations, and informal *modus operandi*, Jung demonstrated that secret “mini-lateral” forums are more effective at solving today’s security problems than international regimes such as the United Nations. Employing the case of the P5 + 1’s efforts to curtail Iran’s nuclear programme, Jung argued that contact groups are far better suited to international crisis management than established institutions with their inclusive approach to membership. Secret summits are proving popular because, simply, they work.

The aim of [Part I](#) of this book was not to provide an absolute and terminal definition of secret diplomacy. Such a design would be anathema to the epistemological nature of academe, particularly to the post-positivist thinkers that populate this volume. Rather, we sought to introduce to the canon the first, serious theoretical discussion on secret diplomacy. As is true of all theory, [Part I](#) “describes a range of possibilities” conducive to stimulating and directing the further development of knowledge by highlighting “gaps” in the canon of diplomatic studies (Hayek 1980: 32).

As such, and bearing in mind a book can only cover a certain amount of topics, there are several views that would further enhance knowledge on secret diplomacy. Despite our best efforts at gender parity, the list of authors is overwhelmingly male. What might a female author, diplomatist or feminist theorist make of secret diplomacy? Similarly, many of the authors call “the West” home. How might a scholar from the Asian or Arab regions – so often the *victims* of European or American clandestine diplomacy – view secret diplomacy? Why, also, do libertarian detractors from old and new media organisations find secret diplomacy so malodourous and repugnant? Other than attacking vague concepts such as the “secret state” or “the man” (a diatribe that is centuries old), might a representative step forward and write – specifically, empirically – why they are against it? And, more importantly, if secret diplomacy is so bad what alternative do they suggest?

Finally, one of the difficulties we had with this book was the nature of this topic. By design, states don't like to talk about secrecy. It's classified, need-to-know, and disclosures of classified material could damage national security; or, humorously, and paraphrasing from Doyle's Hound of the Baskervilles, they could tell us but then they'd have to kill us! Despite freedom of information acts, government oversight bodies and a promise – albeit a slow one – to better publically explain the furtive worlds diplomats frequent, secrecy remains “generally unobservable”, to borrow from Holmes's term in this volume. How, therefore, might a former diplomat or intelligence office explain the business of concealing information from friends, foes, the media and the public?

There remains a significant amount of conceptual work to be undertaken in the theory informing secret diplomacy. However, the conceptual aim of this book was to take a first stab at the topic, to introduce and generate discussion between theorists and practitioners, and to employ theory in a heuristic manner. Confusion, unanswered questions and contests over the meaning, utility and value of secret diplomacy are therefore wholeheartedly encouraged, and quite natural. As Popper (1960: 69) points out, “the more we learn about the world, and the deeper our learning, the more conscious, specific and articulate will be our knowledge of what we do not know, our knowledge of our ignorance”.⁴

Perspectives on secret diplomacy

As we noted in the introduction to this book, diplomatic interactions are shaped by the contexts in which they take place. These settings are important because they serve as ideational backbones to analyse diplomacy: what it is, or ought to be. In this respect, we invited three scholars to provide legal, domestic and ethical perspectives on the practice of secret diplomacy. Once again, many of the chapters spoke to the old/new theme.

In [Chapter 5](#), Sanderijn Duquet and Jan Wouters focussed on the international, national and legal frameworks pertaining to secrecy and confidentiality in state-qua-state relations. Secrecy, the authors contended, is vital to the protection of national interests and the effective conduct of diplomatic negotiations. If anything, “old” frameworks such as the 1961

Vienna Convention on Diplomatic Relations confirm the structural omnipotence and acceptance of secrecy as a key characteristic of diplomacy. That over 190 states have ratified the Convention suggests that all signatories condone the practice of secrecy in diplomatic relations (more evidence that it “works”). While litigation may affect certain domestic, legal regimes protecting secrecy, the MFA and its overseas missions will endure as international “information fortresses”. For Duquet and Wouters, recent domestic and public demands for greater transparency are unlikely to repudiate the protection of secrecy enshrined in international and diplomatic law.

In the following chapter, Anthony Glees concentrated on the domestic sources of secrecy, and the threat libertarians pose to effective diplomacy and intelligence operations. According to Glees secret activity by governments is necessary and not intrinsically unlawful if defined by law. Moreover, governments are increasingly engaging in “open secrecy”, the practice of publically referring to a secret that is widely known to be true but refusing to categorically acknowledge, substantiate or describe it in public. According to Glees, open secrecy constitutes an acceptable means of sharing with the public the fact that secret intelligence and diplomacy takes place in order to realise domestic and foreign policy goals. As such, libertarian arguments for greater transparency are not only “banal and unhistorical” they are also downright “dangerous”. Machiavelli would agree with Glees: governments that privilege “personal secrecy” over national security and secret diplomacy will sooner “learn their ruin, rather than their preservation”.

In [Chapter 7](#), Corneliu Bjola examined the conditions under which secret diplomacy can be considered as normatively justifiable. Like most authors, he found that secret diplomacy was advantageous to the diplomatic process despite the consequent, self-fulfilling dynamic of distrust its ongoing practice creates. Employing the controversial case of the US extraordinary rendition programme, this chapter demonstrated that secret diplomacy is ethically *unjustifiable* when actors fail to invoke normatively relevant principles of justification, inappropriately apply them to the context of the case, and when the moral reasoning process suffers from deficient levels of critical reflection concerning the broader implications of the intended actions for diplomatic conduct. For Bjola, these three dimensions of ethical

analysis – normative relevance, factual grounding and critical reflection – serve as adroit lenses for a more extensive study of the ethical norms inherent to the theory and practice of secret diplomacy.

While the authors in [Part II](#) each chose a different frame of reference – legal, domestic and ethical, respectively – they agreed that states seem to be stuck in the dark ages when it comes to explaining and justifying the practice of secret diplomacy to outsiders. While it would be foolish to imagine states abandoning secret diplomacy, they do need to rethink how they explain and justify secrecy to government audiences, as well as domestic and (now) foreign publics.

Beyond this attitudinal shift, these chapters indicated a vast field of inquiry. In terms of specific research gaps the variety of contexts in which diplomacy takes place are endless, and it would be ambitious to try and list these here. A non-state actor analysis would, however, be valuable. New(ish) actors such as Multinational Corporations (MNCs), Intergovernmental Organisations (IGOs), prominent Civil Society Organisations (CSOs), and even large terrorist organisations, now all engage in diplomatic functions once reserved for the state – communication, negotiation and representation, for example. A non-state actor perspective on secrecy could be valuable as it would generate comparisons between traditional actors, their attitudes and practices. Such analyses would add further layers to an understanding of secret diplomacy in the plural international relations system. How does an MNC such as Halliburton or Google approach secrecy, particularly in interactions with governments, rivals and public stakeholders? What is the relationship between old and new media organisations, and their attitude toward secret diplomacy? WikiLeaks, for example, didn't obtain 251,287 secret diplomatic cables openly. Media crusaders also practise a form of secret diplomacy, of clandestine intelligence gathering, and yet very little is known about how they gather and disseminate information. And, intriguingly, what about the super-secret diplomacy of rogue and violent non-state actors, those we know very little about – the criminal organisations, narco-terrorists, human traffickers, and aggressive terrorists such as ISIS? These, and many other contexts of secret diplomacy, confirm a fecund future research agenda.

Reconciling theory on secret diplomacy with practice

[Part III](#) of this book sought to substantiate the theoretical analyses presented in the first two parts via a set of carefully selected case studies. Our criterion was relatively basic. The cases had to critique secret diplomacy in recent or current international issues or crisis, involve empirical analyses of sensitive and secret negotiations, and contribute to a fuller understanding of how the theory of secret diplomacy is reconciled in practice.

In the eighth chapter, for example, James Pamment discussed yet another example of the old meeting the new, the curious relationship between secret and public diplomacy. Rather than finding the two mutually exclusive, Pamment instead discovered that each “brings forth the other”. This chapter described the interplay between the secret and the public realms of diplomacy in the case of Gripengate, a complex and ultimately futile arms deal between Sweden and Switzerland worth \$3.5 billion (USD). If anything, this case study proved that in the information age the costs of maintaining a secretive space can be disproportionately high, unstable and “leaky”. Furthermore, insisting on the value of secrecy can and often does inadvertently clash with carefully orchestrated public profiles. For nations with a reputation of transparency – such as Sweden and Switzerland – the collision between the secret and the public realms, if poorly managed, can be costly indeed.

In the following chapter David Wong explored secret diplomacy in the context of a pre-eminent security issue of the early twenty-first century – the Joint Plan of Action, a pact signed between Iran and the P5 + 1 countries in Geneva, 2013. Using a discourse analysis of remarks and speeches made by US president Barack Obama in the lead up to the Joint Plan, Wong argued that backchannel diplomacy can and often does encompass a public dimension. To ensure their domestic constituencies ultimately support major foreign policy shifts, states often engage in public strategies *during* secret diplomatic negotiations to “prepare the ground”. Before the Joint Plan was announced, for example, Wong found that decades-old, negative identities about Iran were ardently de-emphasised by the United States when the parties involved in the backchannel negotiations sensed a deal was close. As with the previous chapter, Wong paints a far more complex, multifaceted and public picture of so-called secret negotiations and diplomacy. This

chapter established that strategic leaks and other forms of public disclosure are in themselves negotiation tactics, particularly when embedded perceptions of “enemy states” need to be drastically altered.

In the final chapter of the book, Ashley Coward and Corneliu Bjola described how the landscape of intelligence operations has changed due to revolutions in ICTs. Focussing on offensive and defensive cyber-intelligence operations (CIOs) – the use of web-based technologies for intelligence purposes – they established that cyber-warfare now constitutes a serious threat for established powers. Despite the increasing volume and severity of such threats, however, the authors found that cyber-intelligence is still an underdeveloped concept with few precedents. Using the cases of the Stuxnet worm in Iran and a collection of cyberespionage incidents attributed to China, the authors articulated a diplomatic response framework by examining the scope conditions of informal and formal responses to CIOs. An understanding of how and why states respond diplomatically to CIOs thus enables states to be better prepared to respond to and manage the consequences of incidents they are implicated in, and to proactively instrumentalise their diplomatic responses to achieve desired outcomes, as opposed to simply reacting to incidents as they arise. This chapter suggested that CIOs are a murky dimension of secret diplomacy that blurs the distinction between what diplomacy is and what it ought to be.

As with the contexts of secret diplomacy, the list of cases where secrecy manifests in diplomacy is voluminous. The Internet-age has only increased the volume and it seems rather pointless to suggest research gaps – take your pick! A promising research agenda that this book was unable to address, however, would be to broaden the scope of inquiry beyond Western or Eurocentric perceptions of secret diplomacy. To repeat, a Middle-Eastern, Chinese or African perspective would prove particularly valuable, mainly because certain nations in these regions have often been on the receiving end of secret negotiations, treaties and pacts imposed by more powerful Western states. An Arab theorist or practitioner would most likely have an entirely different view of the merits of secret diplomacy in the 1916 Sykes–Picot agreement, for example, or the worst kept secret in the intelligence community: the covert sponsorship of ISIL by hard-line Wahhabis in Riyadh, Saudi Arabia. The same might be said of an African, Chinese or Pakistani writer. Respectively, what might they make of the Heligoland–Zanzibar

Treaty of 1890,⁵ or the closely guarded secret Chinese Communist Party Archives, or the controversial US drone programme over Afghanistan and Pakistan? In addition, it is interesting to note that the debate between secrecy and openness seems to be at its most vibrant in liberal, democratic societies. Do different types of states have different attitudes, understandings and expectations of government secrecy? The world has yet to meet the Chinese version of Julian Assange or the Saudi Arabian equivalent of Ed Snowden. These and many other obvious cases suggest that we've only just scratched the surface of the topic.

Illustrating new case studies and research gaps was, however, never a core ambition of this book. It was always intended as a starting point for further inquiry into the past, present and future of secret diplomacy. It aimed to complement the literature on the topic, which we felt was rather scant, dated and focussed on historic and descriptive case studies with limited theoretical input. We therefore sought to theorise, substantiate and broaden the current understanding of secret diplomacy, and to examine the motivations that drive diplomats to engage in secret diplomacy, the objectives they hope to accomplish, the strategies they prefer to use, and the extent to which their aspirations are justified by the circumstances of their actions and policies. We also intentionally brought together different research programmes and views on secret diplomacy and integrated them into a coherent analytical framework. As such, this book was unique in terms of its theoretical ambition and empirical scope.

Recommendations for policymakers

A common theme running throughout this book was that while secret diplomacy does have value and utility, the state has to do a far better job of explaining its addiction to secrecy and how intelligence operations at home and abroad actively protects and advances national interests. Cold War attitudes toward public disclosures of sensitive information, extraordinarily shady practices such as the CIA extraordinary rendition programme, and opaque government references to open secrets creates more not less suspicion amongst the public, media organisations and civil libertarians. Consider, for example, Donald Rumsfeld's answer to a journalist inquiring

about the lack of evidence linking Iraq with the supply of weapons of mass destruction to terrorist groups:

Reports that say that something hasn't happened are always interesting to me, because as we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns – the ones we don't know we don't know.

The then Secretary of Defence was globally lambasted for being obtuse, arrogant and flippant, yet it was a quite wonderful statement, a “brilliant distillation of a complex matter” (Steyn 2003: paragraph 10), which stressed the need for caution in going to war. Clearly, however, something was lost in translation.

Open secrecy lifts some of the fog over how states, MFAs and intelligence agencies view the world but at the same time statements made by civil servants such as Rumsfeld only serve to increase public curiosity into the secret realms of international relations. Moreover, trying to keep the public in the dark, or batten down the secret hatches in response to leaks, or labelling techno-libertarians such as Assange and Snowden as security threats, is counter-productive. Such actions only confirm that there are more, and better, secrets hidden within the vaults of states. Governments should understand that secrecy isn't a pejorative aspect of diplomacy. Diplomacy couldn't function effectively without it and, furthermore, the public are hardly averse to secret diplomacy in their personal or working lives. All human beings wrestle with similar dichotomies between the public and the private, the secret and the open. These are “known knowns: things we know we know”.

In addition, maintaining draconian attitudes toward secrecy will only get harder in an age of enhanced Internet connectivity, Big Data and hacktivism. To use Internet connectivity as an example, there were roughly 16 million Internet users in 1995; five years later 361 million people used the Internet, and by the end of 2012 2.7 billion were online (International Telecommunications Union 2013: 2–3). If individuals such as Facebook CEO and founder Mark Zuckerberg get their wish, soon *everyone* will be able to access the Internet.⁶ Such drastic changes to the speed, avenues and ways

people exchange ideas and information is unprecedented, mind-boggling and fascinating. The Internet of Everything, the democratisation of information, and wave after wave of ICT, is drastically changing the way people and states gather, collate and disseminate information. In such a transformative environment, leaks are likely to increase.

These changes are unlikely to revolutionise diplomacy, or alter its key foundations as a tool for communication, negotiation, representation and the minimisation of friction – what diplomacy *is* and what it *does*, in other words. The mass government stampede toward public diplomacy over the past decade also suggests that diplomats are open to change, so long as it doesn't detract from national security. And, it has to be remembered, states have many secrets that are worth protecting – weapon designs, military operations and diplomatic negotiation tactics, to name but a few – from other governments, the media and the public. However, and to repeat, states need to first acknowledge the practice of secret diplomacy and explain its widespread acceptance as a vital cog in the diplomatic machinery.

Conclusion: back to the future

Most of the authors in this volume argued and evidenced that secret diplomacy does work, concomitant to the structural nature of the state system, and the desires of *all* governments to secretly or publically advance security, diplomatic and foreign policy goals by *any* means possible. Secret diplomacy continues to demonstrate utility, especially when a diplomatic end cannot be achieved publicly between adversaries. Writing in the *Guardian* newspaper, Jonathan Powell (2008: paragraph 1), Tony Blair's former chief of staff, noted of the backchannel communication between the IRA leadership and Downing Street:

It is very hard for democratic governments to admit to talking to terrorist groups while those groups are still killing innocent people. Luckily for this process, the British government's back channel to the provisional IRA had been in existence whenever required from 1973 onwards.

The same might be said of adversarial relationships with rogue states and recalcitrant terrorist organisations. As the above quote confirms, governments do negotiate with terrorists more commonly than the public assumes. In intractable conflicts each side has so much to give and lose they rarely publically admit or concede anything. Whereas, if total secrecy can be guaranteed, trust can be established and the improbable happen. Whether thinking of the secret negotiations between Kissinger and Lê Đức Thọ in Paris in 1972 and 1973, or the Oslo Accords of 1993, or the 2007 meetings between the UK diplomats and the Taliban, or the recent de-escalation of the Iranian nuclear crisis, secrecy, confidentiality and a lack of public or media input, matters to traditional diplomacy.

That we live in a time when it will soon be “difficult to imagine secret diplomacy” is a more difficult proposition to accept (Kurbaliga 2011: paragraph 25). The critic’s arguments seem to rest on two broad and rather wobbly claims. The first is that the digital age, with its emphasis on world society, openness and the democratisation of information, will bring about the “end of secrecy”. Granted, the changes wrought on international relation since the end of the Cold War are significant. However, it is “the conceit of every individual that we live in interesting times”, as Peter Varghese (2015), the current secretary of Australia’s Department of Foreign Affairs and Trade, recently noted. If the observer moves beyond the scope of Internet connectivity, or the telescopic speed at which international crises morph, it becomes obvious that diplomacy has endured, adapted and outlasted similar revolutions in its long and storied past. So-called revolutions are a common theme in the theory and practice of diplomacy. Scholars and practitioners are forever writing of the “new” diplomacy yet the “old” survives each time; nothing “dies” or “ends”. The contexts and means of diplomacy may change, but its foundations (to represent, communicate and realise a state’s national interest, for example) do not and should not change.

The second claim of the critics relates to the duality inherent to diplomacy, something that seems quite lost on detractors of secret diplomacy. Similar to their forebears, techno-libertarians argue their case from a restrictive, binary and “either/or” position. For example, and to repeat a quote used in the introduction, the journalist Maurice A. Low (1918: 220) claimed that old diplomacy was laced with “the chicanery, fraud, intrigue that for centuries have deluged Europe in blood and brought misery”.

Outlawing secret diplomacy would somehow, magically, “make diplomacy honest, straightforward, clean”. Fast forward to 2010 and Julian Assange noted that when it comes to secrecy, states

have one of two choices. The first is to reform in such a way that they can be proud of their endeavours, and proud to display them to the public. The second is to lock down internally and to balkanize, and as a result, of course, cease to be as efficient as they were. To me, that is a very good outcome, because organizations can either be efficient, open and honest, or they can be closed, conspiratorial and inefficient.

Little seems to have changed in the critic’s opinions despite the passing of almost a hundred years. In addition, diplomacy is not as simple or monolithic as Low or Assange make out. A key characteristic of diplomacy is that is entirely Janus-faced, the “art of saying nice doggie, until you can find a rock”, in the words of Will Rogers, the 1930s American humourist and social commentator.

Just as Holbein’s *The Ambassadors* is a particularly relevant painting to the topic of secret diplomacy, so too is Janus, the Roman god of doorways, the rising and the setting of the sun, and of beginnings and endings. In sculpture, Janus was represented – oddly – as having one head but with two faces looking in opposite directions. Scholars have long related Janus to diplomacy, as have practitioners such as Sir Henry Wotton, the seventeenth-century English diplomat “sent to lie abroad for the good of his country”. The reason why is simple: the two-faced Janus is the personification and epitome of the duality woven into the DNA of diplomacy, since time immemorial. Diplomacy is neither open nor closed, nor should it be. It is neither secret or public, nor good or bad. It is all of the above. Like Janus, it has two faces ... at least.

Transparency does have a role to play in international relations – it has been pivotal in the compliance of the moratorium on nuclear weapons, for example – but there are “significant reasons to move cautiously toward greater reliance on openness”, especially if it comes at the cost of undermining national security (Florini 1998). It has to be remembered that states, the custodians of diplomacy, are rational actors. That is, they strive to take optimal foreign policy decisions based on the information available to

them *at the time*, conducive to national interest. As history informs, states occasionally get these decisions wrong, often with tragic outcomes. However, they also get a lot of decisions right, many of which the public never hear of or care for, such is the nature of diplomacy as the unsung hero and of the international relations system. Those who attack diplomacy as a secret, anachronistic instruction fit for euthanasia do not seem to care how diplomacy works, only when it fails. This misunderstanding of diplomacy as the “engine room” of international relations, as a key institution in the minimisation of friction between estranged states, is perhaps the greatest secret yet to be accepted by the media, public and civil libertarians, old and new (Cohen 1998: 1).

Notes

- 1 The workshop was entitled “Science Diplomacy: what role of science for IR and diplomatic theory?”, and was held at the University College London on 15 June 2015. The paper I’m referring to was presented by Richard Devetak of the University of Queensland. His focus on the science shouldn’t come as a surprise as Holbein’s painting is littered with scientific objects and books.
- 2 The meaning of the skull generates vibrant debate. For some it is a *memento mori*, a means of considering the vanity of earthly life, and that we all have to die someday. For others it the skull is *vanitas*; similarly, a symbol that speaks to the transient nature of earthly goods and pursuits. Most likely, however, Holbein was simply showing off (few people could pull off anamorphosis with such grace), and demonstrating his skill as an artist to secure his next commission.
- 3 A good example of this duality is one that appears time and time again in this volume: President Obama publically trumpeting that transparency would be a “touchstone” of his administration in 2009 while, at the same time, engaging in very secret methods as part of the Global War on Terror. His actions confirm the age-old government practice of saying one thing in public and believing or doing another in private. For a copy of the speech see the White House website, online, available at: www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.
- 4 Sir Karl Popper (1960: 69) offers a useful analogy:

It is as though science were working in a great forest of ignorance, making an ever larger circular clearing within which, not to insist on the pun, things become clear.... But, as that circle becomes larger and larger, the circumference of contact with ignorance also gets longer and longer. Science learns more and more.... We keep, in science, getting a more and more sophisticated view of our ignorance.
- 5 A secret agreement between Great Britain and Germany concerning territorial and commercial interests in Africa.
- 6 A global network where *everyone* is connected is in fact the end goal of internet.org, a consortium of ICT business leaders such as Mr Zuckerberg.

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